IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2022

CORAM

THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.OP.Nos.12967 & 12969 of 2022

Crl.OP.No.12967 of 2022

T.Nandhini ..Petitioner

Vs.

Senior Intelligence Officer, ..Respondent
Directorate of Revenue Intelligence,
Regional Unit,
1103, Trichy Road,
Coimbatore-641 018.

PRAYER:

Criminal Original Petition is filed under Section 439 of Cr.P.C. praying to enlarge the petitioner on bail in F.No.DRI/CRU/VIII/48/ENQ-1/INT-2/2022-CBE on the file of the respondent.

For Petitioner : Mr.B.Satish Sundar

For Respondent : Mr.N.P.Kumar,
Special Public Prosecutor

Crl.OP.No.12969 of 2022

Shri Tangkeswaran ..Petitioner

Vs.

Senior Intelligence Officer, ..Respondent
Directorate of Revenue Intelligence,
Regional Unit,
1103, Trichy Road,
Coimbatore-641 018.

PRAYER:

Criminal Original Petition is filed under Section 439 of Cr.P.C. praying to enlarge the petitioner on bail in F.No.DRI/CRU/VIII/ 48/ENQ-1/INT-2/2022-CBE on the file of the respondent.

For Petitioner : Mr.B.Satish Sundar

For Respondent : Mr.N.P.Kumar,
Special Public Prosecutor

COMMON ORDER

The petitioners, who were arrested and remanded to judicial custody on 30.04.2022 for the offence punishable under Section 135 of Customs Act, 1962 in F.No.DRI/CRU/VIII/ 48/ENQ-1/INT-2/2022-CBE on the file of the respondent, seek bail.

2. It is the case of the prosecution that specific intelligence was gathered that four Malaysian passengers by name Tangkesvaran.M (passport No.A55506477), Nandhini.T (passport No.A55506479), Koomathi.T (passport No.A55506511) and Mangaleswari.B (passport No.A55506541) coming from Singapore to Coimbatore International Airport by Scoot Airlines flight No.TR 540 and would be carrying gold by concealing the same either in person or in their checked-in baggage / hand luggage and clearing the same by or declaring to the Customs with an intention to evade payment of customs duty. The officers of DRI identified and intercepted the above foreign passengers as they passed through the green channel in the Customs arrival hall. One, Tangkesvaran was carrying a small shoulder bag and a checked in luggage, and one, Nandhini.T, his relative was carrying a small handbag and a checked in luggage. The other two passengers Koomathi.A and Managaleswari.B were carrying one checked in luggage each. When enquired by the officers as to whether they were carrying any gold / contraband / dutiable goods from Singapore either in person or in their baggage and not declared to the Customs, all the passengers replied in the negative. During the search of the above passengers' luggage, the officers found one very heavy object concealed by wrapped in off white coloured adhesive tape in the shoulder bag of Tangkesvaran and one very heavy object wrapped in off white coloured adhesive tape in the hand bag of Nandhini. When enquired about the heavy objects, both Tangkesvaran and Nandhini informed they were gold bars of foreign origin. When the officers enquired whether they had declared to the customs about the gold and whether they had any duty paid documents or any receipts to prove the licit nature of the said gold recovered from them, they replied that they have not declared about the gold to the customs nor did not have any valid documents to carry the said gold or to prove the licit nature of the said gold.

2.1 It is the further case of the petitioners that the gold appraiser examined all the six yellow coloured metal bars and informed that all the said six bars were gold of 24 carat purity, weighing 1 kilo (4 nos.) and 100 grams (2 nos.) as per the markings on them. The gold bars were totally weighing 4.200 kilograms, valued of Rs.2,25,54,000/-. Hence, the officers informed that on the reasonable belief that the 4.200 kgs of gold (in the form of 1 kilo bullion bars and 100 grams bullion bars) which were wrapped in the off white coloured adhesive tape and kept concealed in their hand baggage / shoulder bag and recovered from Tangkesvaran and Nandhini were smuggled into India and hence they were liable to be confiscated under the Customs Act, 1962 and therefore, the officers seized the entire quantity of 4.200 kgs of gold under mahazar proceedings.

3. The learned counsel appearing for the petitioners would submit that the petitioners are Malaysian National of Indian Origin. They hold Malaysian passport. They arrived at Coimbatore International Airport from Singapore. They carried with them one kilogram of gold each, which they are eligible to import in terms of extant notification No.50/2017. The gold which were seized from the petitioners purchased by them of their own earnings and savings under the invoices issued by M/s.Trust Bullion PTE Limited, Singapore dated 29.04.2022. They along with two other relatives arrived at Coimbatore International Airport from Singapore. They are also Malaysian Nationals of Indian Origin. As per the notification, they are eligible passengers in terms of the relevant notification which allows them to bring in and import gold as part of their baggage. They were intercepted by the respondent in the International Airport and refused to allow them to declare the above facts before the authority concerned. In fact, they also possessed foreign currency which was duly seized by the respondent. However, it was not shown in the seizure mahazar.

3.1 He would further submit that the statements were recorded from the petitioners by the respondent and that are wholly involuntary and one brought out of coercion and threat exercised by the respondent. Therefore, the entire action taken by the respondent for seizing the gold in the possession / ownership of the petitioners and others is *ex facie* illegal and vitiated as per the rules. In fact, the gold was kept in open manner in the hand luggage without any attempt at ingenious concealment and it should also be taken note of as also the possession of requisite convertible foreign currency for payment of duty. Thus, the arrest of the petitioners under Section 135 of Customs Act, 1962 is unsustainable. The respondent has power to arrest in terms of Section 104 of Customs Act can be exercised only if the petitioners committed offence punishable under Section 135 of the Customs Act related to evasion or attempt to evasion of duty exceeding Rs.50 lakhs and import or export of any goods which have not been declared in accordance with the provisions of the Act and market price of which exceeds Rs.1 crore. Whereas in the case on hand, the petitioners were in possession of gold worth just Rs.56 lakhs and not even exceeds Rs.1 crore. The concessional duty of the said gold carried by each passengers is 13.75 % in aggregate which will be around Rs.7.75 lakhs. Therefore, the value of the gold of the each passengers being less than Rs.1 crore and the duty amount qua the same being less than Rs.50 lakhs. Therefore, the petitioners cannot cause arrest of the petitioners nor charge them for the offence under Section 135 of Customs Act, 1962.

3.2 He also pointed out that on plain reading of Section 104 (6) of the Customs Act and Section 135 of the Customs Act would show that the petitioners need not be arrested. He further submit that even assuming that without admitting the fact that there has been no proper declaration of seized gold, the offence as against the petitioners is bailable and their arrest and incarceration of the imprisonment are illegal and factually untenable. The market value of the gold of 1 kg possessed by each petitioner worth about Rs.56 lakhs and it becomes dutiable at the rate of 38.5 % and it would come to Rs.21.69 lakhs, which is also below the limit of Rs.50 lakhs.

4.The learned Special Public Prosecutor appearing for the respondent would submit that as per the statement dated 30.04.2022 of the petitioner in Crl.OP.No.12969 of 2022, the following facts are revealed:

(a) he left Malaysia to Singapore on 29.04.2022 by Scoot Airlines and on the same day from Singapore to Coimbatore.

(b) he agreed to the contents of the seizure mahazar dated 29/30.04.2022 drawn at the International Airport, Coimbatore

(c) he admitted that the officers seized 2.100 kilograms of foreign origin gold in bullion form valued at Rs.1,12,77,000/- when he arrived from Singapore

(d) he got acquainted with Mrs. Maheswari, of Kuala Lumpur and Shri Giri of Chennai and during the first week of April 2022 he informed Shri.Giri that himself and three friends were intending to visit Coimbatore, Madurai and Palani as tourists.

(e) Shri.Giri and Smt.Maheswari asked Shri. Tangkesvaran the petitioner to come to Singapore to collect the gold and travel to Coimbatore from there and also informed that their person would come and collect the gold from him outside the Coimbatore airport and they offered return flight tickets for all.

(f) by accepting the above offer, the petitioner shared the passport details of all the four passengers to book tickets based on which Shri.Giri of Chennai booked flight tickets for the three women passengers from Kuala Lumpur to Coimbatore (via) Singapore and he also booked return tickets for us from Chennai

(g) the petitioner booked his ticket from Penang to Singapore as directed by Shri.Giri, collected the 4.200 kilograms of gold from an accomplice of Shri Giri at Singapore airport at a pre-determined place and boarded the flight.

(h) as directed by Shri Giri, the petitioner handed over one parcel of gold to Smt, Nandhini and he stated that the other two passengers were not aware of the contraband smuggled

(i) Shri.Maheswari informed the petitioner that the gold bars will be collected by Shri.Giri himself outside the Coimbatore airport and she shared dummy invoices through Whatsapp as if the gold attempted to be smuggled were procured by four of them.

(j) the petitioner admitted that he misused the genuine travel plants of the other passengers for his personal gains (by smuggling gold) and the mobile phone used by him to communicate about the gold smuggling was seized under mahazar dated 29/30.04.2022.

4.1 Further, each of the petitioner was possessed 2.100 kilograms of gold and in the mahazar proceedings, the seized quantity of gold weighing 4.200 kg of foreign origin were recovered from the petitioners. Even according to their own admission, other two passengers did not bring any gold. In fact, other passengers had no knowledge about the possession of gold by the petitioners. Therefore, the stand taken by the petitioners are only after-thought and baseless. As instructed by one, Guru of Chennai and one, Maheswari of Kuala Lumpur, they collected 4.200 kg of foreign origin gold bars in two packets from one, Murugan at Singapore Airport and to deliver the same at Coimbatore for monetary consideration. In fact, they also possessed return flight tickets for them. He would further submit that the Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, issued guidelines for travellers dated 27.08.2020, wherein it clearly mentioned the eligibility of foreign passengers who visit India as a tourist. Accordingly, any passenger of Indian origin or passenger holding valid passport coming to India, after a period of not less than six months of stay abroad, can import gold as baggage. Except these passengers, no other passengers are allowed to import gold as baggage.

4.2 He would further submit that the duty shall be paid in convertible foreign currency. The concessional rate of duty at 12.5% + Social Welfare Surcharge at 1.25% is applicable for gold to Indian passport holders and persons of Indian origin, if stays for more than six months. Short visits up to a total of 30 days during the six months shall be ignored. In cases of other than those mentioned in clause-(ii), normal rate of Customs Duty at 38.5% will be charged, that too, weight of gold should not exceed 1 kg per person. Whereas in the case of the petitioners, they did not furnish any piece of evidence to prove that they are origin of India. Therefore, they are not eligible to avail the benefits of passenger of Indian origin or a passenger holding valid passport issued by the Passport Act. They were in possession of 4.200 kg of gold and as such they cannot claim as eligible passenger to avail the benefits of the notification.

5. Considering the above facts and circumstances of the case and also the submissions made by the learned counsel appearing for the petitioners that the petitioners are ready and willing to deposit some amount as imposed by this Court without prejudice to their rights of defence and the period of incarceration by the petitioners, this Court is inclined to grant bail to the petitioners. Accordingly, each of the petitioners shall deposit a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) to the credit of F.No.DRI/CRU/VIII/ 48/ENQ-1/INT-2/2022-CBE on the file of the respondent and on such deposit, the petitioners are ordered to be released on bail on their executing a separate bond for a sum of Rs.50,000/- (Rupees fifty thousand only) (each) with two sureties, each for a like sum to the satisfaction of the learned Chief Judicial Magistrate, Coimbatore and on further conditions that:

[a] the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

[b] each of the petitioners shall deposit Rs.10,00,000/- (Rupees Ten Lakhs only) to the credit of F.No.DRI/CRU/VIII/ 48/ENQ-1/INT-2/2022-CBE on the file of the respondent, before the Magistrate concerned.

[c] the final order in respect of the said deposit shall be passed by the learned trial Judge at conclusion of trial.

[d] the petitioners shall report before the respondent police daily at 10.30 a.m. and 05.30 p.m. for a period of four weeks and thereafter as and when required for interrogation

[e] the petitioners shall not abscond either during investigation or trial.

[f] the petitioners shall not tamper with evidence or witness either during investigation or trial.

[g] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioners in accordance with law as if the conditions have been imposed and the petitioners released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560].**

[h] If the accused thereafter abscond, a fresh FIR can be registered under Section 229A IPC.

-sd/-
09/06/2022

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE CHIEF JUDICIAL MAGISTRATE
COIMBATORE.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE SENIOR INTELLIGENCE OFFICER
DIRECTORATE OF REVENUE INTELLIGENCE,
REGIONAL UNIT, 1103,
TRICHY ROAD, COIMBATORE-641 018.

4 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL, CHENNAI.

+4 CC to M/S B.SATISH SUNDAR Advocate on payment of necessary charges SR.NO.8684, 8685

CRL OP.12967 & 12969/2022

Date :09/06/2022

TA-10/06/2022