



CrI.O.P.No.14569 of 2022

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G.K.ILANTHIRAIYAN, J.

The petitioner who apprehends arrest at the hands of the respondent police for the offences punishable under Section 135 of the Customs Act, 1962, in F.No.DRI/CRU/VIII/48/ENQ-1/INT-2/2022-CBE, seeks anticipatory bail.

2. The case of the prosecution is 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.



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2.1. 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.T 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.

2.2. 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



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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.

2.3. It is the further case of the prosecution 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.



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2.4. From the statements recorded from the said Tangkesvaran and Nandhini, it came to know about the involvement of the petitioner herein in the aforesaid crime. Further the respondent had resumed the mobile phones of the aforesaid persons and downloaded whatsapp messages and voice recording which showed the involvement of the petitioner.

3. The learned Senior Counsel appearing for the petitioner submitted the accused persons came from Malaysia to Singapore and each of the said persons are Malaysian citizens of Indian origin and they are entitled to bring the gold as part of baggage for lawful import to the extent of one kilogram of gold each. As per the notification for import of gold, they are eligible passengers as baggage inasmuch as they had stayed abroad for a period of six months and more and had convertible foreign currency for payment of duty with respect to the gold sought to be brought.



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3.1. Even according to the case of the prosecution, two passengers were in possession of gold and they were arrested and remanded to judicial custody. In fact, they subsequently released on bail by this Court. Even though seizure was on all the four passengers, the respondent had clubbed the gold brought by other two passengers and showed seizure of two kilograms and odd each on the said persons bringing the threshold limit of rupees one crore. Therefore, the entire case of the prosecution is based on the recovery of the gold and the subsequent statement said to have been recorded from the arrested accused persons.

3.2. He further submitted that on the strength of the statement recorded from the accused persons, the petitioner is also implicated as accused. The statement recorded from the accused person is inadmissible in this case. Therefore, the accused statement implicating the petitioner as an accused cannot be sustained as such, the custodial interrogation of the petitioner does not require in this case. Hence he prays to grant anticipatory bail to the petitioner.



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4. The learned Special Public Prosecutor (DRI cases) filed counter and it revealed that the petitioner is the main brain behind the entire crime. There are irrefutable corroborative evidenced include voice files, text messages, picture messages sent and received from the petitioner herein and other accused person, from whom the gold was collected as per the instruction of another accused person. Therefore, the conscious and active involvement of the petitioner and other accused persons had refused to sign the mahazar drawn during the digital forensic examination.

4.1. In fact, the respondent visited the residential premises of the petitioner on 19.06.2022 and the petitioner was not present at home. Therefore, the petitioner was issued summons to appear for enquiry. However on receipt of the same, the petitioner did not appear for enquiry. Hence, he vehemently opposed to grant anticipatory bail to the petitioner.

5. It is seen that the arrested accused were released on bail by this Court in Crl.O.P.Nos.12967 & 12969 of 2022 by an order dated



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09.06.2022. Even according to the case of the prosecution, the petitioner was not in possession of any gold and as per the statement of the arrested accused, the petitioner has been implicated as an accused. Considering the above facts and circumstances, this Court feels that the custodial interrogation of the petitioner does not require in this case and hence, this Court is inclined to grant anticipatory bail to the petitioner with certain conditions.

6. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on his appearance, within a period of fifteen days from the date on which the order copy made ready, before the learned Chief Judicial Magistrate, Coimbatore, on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties, each for a like sum to the satisfaction of the respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned, failing which, the petition for anticipatory bail shall stand dismissed and on further condition that:



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[a] the petitioner and 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] the petitioner shall report before the respondent police daily at 10.30 a.m., and co-operate with the enquiry, for a period of four weeks and thereafter as and when required for interrogation.

[c] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[d] the petitioner shall not abscond either during investigation or trial.

[e] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner 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]**.

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

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