



CRL.O.P.No.16291 of 2022

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WEB COPY **G.K.ILANTHIRAIYAN, J.**

The petitioner, who apprehends arrest at the hands of the respondent police for the alleged offences punishable under Sections 135 of the Customs Act in F.No.DRI/CZU/VIII/48/ENQ-01/INT-32/2022, on the file of the respondent police, seeks anticipatory bail.

2. The case of the prosecution is that the goods imported by the petitioner by declaring as unflavoured supari contained in two containers weighing about 34 metric tones to the value of Rs.1,31,64,963/-, which was permitted to be moved from M/s. Sattva CFS & Logistics Pvt Ltd., to be stored in M/s.Sapthagiri Logistics Bonded Warehouse under the provisions of Section 49 of Customs Act, has been planned to be taken illegally to M/s. Sakthi Warehouse Corporation for removing the imported goods clandestinely and in its place to substitute with saw dust. It is alleged that the petitioner and other accused substituted the goods would get bonded in the above said bonded warehouse as per records and that they clandestinely removed the imported goods without the payment of customs duty were planned to be diverted to Nagpur. Immediately, the respondent caught red handed the activity



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of such clandestine removal of the imported goods and both the containers were seized and detained by the respondent herein. Hence, this complaint.

3.The learned Senior Counsel appearing for the petitioner would submit that during the course of business, the petitioner had caused importation of three consignments of unflavoured supari. The supplier of the said good was M/s.Kwan Global Company Ltd. The classification claimed by the importer as per concessional rate of duty. In this regard, there was a dispute with regard to payment of duty, since the goods is perishable in nature and increased detention and demurrage charges. Hence, the petitioner made a request to the Customs Authority for conducting adjudication and allowing re-export of the cargo without issuance of show cause notice. However, the Additional Commissioner of Customs (Group 1) passed an order rejecting the declared classification and value, confiscating the goods under Sections 111(d) and (m) of the Customs Act, giving option to redeem the goods for re-export on payment of fine of Rs.15,00,000/- and sustaining a penalty of Rs.20,00,000/- under Sections 125, 112(a)(i) of the Customs Act.



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3.1. He further submitted that in terms of the said order, the petitioner and his firm had to re-export the good within 60 days from the receipt of that order. It was challenged by the petitioner by a statutory appeal and the same was also rejected by the appellate authority. Further, now the petitioner is ready and willing to pay the said penalty and find and he may be permitted to re-exported the goods as per the order of the Additional Commissioner of Customs (Group 1). Hence, he prays to grant anticipatory bail to the petitioner.

4. The learned Special Public Prosecutor (DRI Cases) appearing for the respondent submitted that the petitioner is attempted to remove the imported goods clandestinely and in its place substitute with saw dust without even paying the fine of Rs.15,00,000/- and penalty of Rs.20,00,000/- that too for re-export. The petitioner without doing any re-export of goods attempted to divert the goods to domestic market in violation of the provisions under Section 33, 34 and 49 of the Customs Act. Hence, he vehemently opposed to grant anticipatory bail to the petitioner.

5. Even according to the prosecution, in pursuant to the said crime, the second accused arrested and remanded to judicial custody, who is the clearing



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agent of the goods. Considering the submission made by the learned Senior Counsel, this Court is inclined to grant anticipatory bail to the petitioner with certain conditions.

6. Accordingly, the petitioner shall deposit a sum of Rs.35,00,000/- (Rupees thirty five lakhs only) as fine and penalty as imposed by the Additional Commissioner of Customs by an order dated 16.02.2022 to the credit of F.No.DRI/CZU/VIII/48/ENQ-01/INT-32/2022 within a period of fifteen days from the date on which the order copy made ready and on such deposit the petitioner is ordered to be released on bail in the event of arrest or on his appearance, 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:

[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.



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[b] the petitioner shall deposit a sum of Rs.35,00,000/- (Rupees thirty five lakhs only) as fine and penalty as imposed by the Additional Commissioner of Customs by an order dated 16.02.2022 to the credit of F.No.DRI/CZU/VIII/48/ENQ-01/INT-32/2022, within a period of fifteen days from the date on which the order copy made ready.

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

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

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

[f] the petitioner shall not abscond 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 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]**.

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

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