



CRL.O.P.No.25917 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.25917 of 2022

M.Mohamed Hussain,
S/o.Mohamed Musthafa

... Petitioner

Versus

State rep by,
The Inspector of Police,
C-4, Rathinapuri Police Station,
Coimbatore District.
Crime No.466 of 2022

... Respondent

PRAYER: Criminal Original Petition filed under Section 439 of the Code of Criminal Procedure, to enlarge the petitioner on bail concerned in Crime No.466 of 2022 pending on the file of the respondent Police.

For Petitioner	:	Mr.S.N.Arunkumar for Mr.C.Ramkumar
For Respondent	:	Mr.C.E.Pratap, Government Advocate (Crl. Side)

ORDER

The petitioner, who was arrested and remanded to judicial custody on 07.09.2022, for offence, under Sections 273 & 328 of IPC and Sections



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7(1), 24(1) of Cigarette and other Tobacco Products Act and 8(c) and 20(b)(ii)(B) of NDPS Act in Crime No.466 of 2022, on the file of the respondent Police, seeks bail.

2.Gist of the case is that when the respondent Police on 07.09.2022 was conducting vehicle check, the petitioner came in while colour Honda Activa bearing registration No.TN 99 F 1814 with gunny bag. When the petitioner was intercepted and enquired, he gave contradictory version, which caused some doubt. When further enquired and the bag was opened, in it banned tobacco products such as Vimal Panmasala-169 kgs, D1 Tobacco-30 kgs, Hans-192 kgs, Ganesh-9 kgs, Local Toppaco-15 kgs, totally 330 kgs were found. When he was further enquired, he admitted that it was A1-Sayad Ali, who sourced tobacco products and he directed the petitioner to handover the same to various persons and also to sell the same. Thereafter, the petitioner was taken to A1-Sayad Ali, where apart from the above tobacco products, 1.100 kgs of ganja was found and seized. A1 admitted about the involvement of the other accused in this case for procuring and also for distributing the tobacco products. Hence,



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the complaint.

3.The learned counsel for the petitioner submitted that the petitioner has been falsely implicated in this case as though he was carrying banned tobacco products in his two wheeler when he was intercepted and arrested. The respondent Police though stated that during the road check in public, the contraband was seized, the seizure of said products were not made in presence of public witness and no reason given for the same. In this case, all the witnesses are police witnesses, hence, it is a foisted case. He further submitted that the petitioner was denied bail by the lower Court for the reason that the ganja was also seized in the above crime number, failing to look into the fact that initially, only tobacco products were seized from the petitioner, thereafter, independently from A1, the alleged seizure of ganja made. He further submitted that already for A1, the lower Court in Crl.M.P.No.3612 of 2022, dated 07.11.2022 granted statutory bail under Section 167(2) Cr.P.C. Due to pendency of above bail application before this Court, the petitioner is unable to file such petition before the lower Court. Hence, he sought for bail.



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4.The learned Additional Public Prosecutor appearing for the respondent Police submitted that in this case, during road check, the respondent Police initially apprehended the petitioner, who was carrying banned tobacco products to the tune of 85 kgs and thereafter, pursuant to his confession, the other accused, who are all part of larger group and actively involved in sourcing and retailing the banned tobacco products including ganja, were arrested. On the disclosure of the petitioner, A1 house was searched and 1.100 kgs of ganja were seized apart from the said tobacco products. Totally 16 accused in this crime number. Unless the petitioner kept in detention, menace of tobacco cannot be controlled. He fairly submitted that the petitioner arrested on 07.09.2022 and confirmed granting of statutory bail to A1 in this case.

5.On considering the submissions and on perusal of the materials, it is seen that the petitioner arrested on 07.09.2022. From the petitioner, except for banned tobacco products, no cannabis were seized. The seizure of ganja of 1.100 kgs was made from A1. It is further seen that already,



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A1 was granted bail by the lower Court, of course, under Section 167(2) of Cr.P.C., which is an indefeasible right ensures to the petitioner also. In this case, admittedly, the charge sheet is yet to be filed. In the event of charge sheet filed, then to, the petitioner is involved in transportation of banned tobacco products.

6.Taking into consideration the facts and circumstances of the case and the submissions made by the learned counsel and also considering the period of incarceration, this Court is inclined to grant bail to the petitioner with certain conditions:-

7.Accordingly, the petitioner is ordered to be released on bail on his executing 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 learned Judicial Magistrate No.II, Coimbatore and out of two sureties, one surety must be close blood relative/parents/spouse of the petitioner and on further conditions that:

[a] the sureties shall affix their photographs and Left Thumb



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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 10.00 a.m., for thirty days and thereafter, as and when required for interrogation.

[c] the petitioner shall not commit any offences of similar nature and 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 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



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under Section 229A IPC;

9. Accordingly, this Criminal Original Petition is ordered.

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Index: Yes/No

Internet: Yes/No

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To

1. The Judicial Magistrate Court No.II,
Coimbatore.
2. The Superintendent,
Central Prison, Coimbatore.
3. The Inspector of Police,
C-4, Rathinapuri Police Station,
Coimbatore District.
4. The Public Prosecutor,
High Court, Madras.

M.NIRMAL KUMAR, J.



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