



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17/03/2022

PRESENT

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P. (MD)No.2598 of 2022

WEB COPY

K.Muthukumar

... Petitioner/Accused No.1

Vs.

The State rep.by,
The Inspector of Police,
Sivakasi Town Police Station,
Virudhunagar District.
(Crime No.444 of 2020)

... Respondent/Complainant

For Petitioner : Mr.J.Jeyakumaran, Advocate.

For Respondent : Mr.SS.Madhavan
Government Advocate
(Criminal side)

PETITION FOR ANTICIPATORY BAIL under Sec.438 of Cr.P.C

PRAYER :-For Anticipatory Bail in Crime No.444 of 2022 on the file of the Respondent Police.

ORDER : The Court made the following order:-

The petitioner, who is arrayed as A1 apprehending arrest at the hands of the respondent police for the alleged offences punishable under sections 328, 353, 506(ii) IPC and section 6(b) r/w section 24 (1) of Cigarettes and Tobacco (Prohibition and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, in Crime No.444 of 2020, seeks anticipatory bail.

2.The case of the prosecution is that the accused persons had illegally transported 300 pockets of prohibited Tobacco items.

3.Heard both sides.

4.The earlier anticipatory bail application that was filed by the petitioner came to be dismissed by this court on the ground that the petitioner is involved in 20 previous cases of like nature. Now the specific allegation against this petitioner in the FIR is that when the police team intercepted the vehicle, in which this petitioner was travelling along with the co-accused, both of them criminally intimidated the police team; one of the accused namely Mahesh was arrested in the place of occurrence itself; the another

<https://hccs.courtts.madras.gov.in/cases/>



occurrence and the vehicle and the tobacco have been seized from the place of occurrence, which is evident from the photographs.

5.The contention on the part of the petitioner that the respondent police indulged in continuously foisting cases upon the petitioner and before the trial court, they are only paying fine on their behalf and only for statistical purpose, this case has also been foisted.

6.Absolutely, I am not able to agree with this line of argument. But whether section 328 IPC will be attracted, when tobacco products are involved, is a matter for serious consideration. A similar issue has been raised in the connected matter and judgments have been circulated to this court that the tobacco products will not be and cannot be construed as a poisonous substance or any stupefying intoxicating or unwholesome drug or other things. The main ingredient is that, that must be administered or cause to be taken with intent to hurt any person. Whether selling of the tobacco products will amount to intentional act or cause hurt to the individual purchaser is a matter for consideration by the trial court. So prima facie section 328 IPC may not be attracted, but subject to the trial process. But the allegation of criminal intimidation has also been made against the petitioner. When the allegation of criminal intimidation is made against the petitioner, considering his past antecedents, he is not entitled to the discretionary relief of anticipatory bail. He has to surrender either before the respondent or the concerned court and seek regular bail.

7.In the result, this criminal original petition is **dismissed**.

sd/-
17/03/2022

/ TRUE COPY /

/ /2022
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



TO

1. THE SUB INSPECTOR OF POLICE
SIVAKASI TOWN POLICE STATION,
VIRUTHUNAGAR DISTRICT.
2. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL OP (MD) No.2598 of 2022
Date :17/03/2022

er
MK/VR/SAR.II/12.04.2022/3P/3C