



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Reserved on : 27/04/2022

Delivered on : 18/05/2022

WEB COPY

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD). No.6955 of 2022

Mohammed Azarudeen

... Petitioner/Sole Accused

Vs

The State Rep. By,
The Senior Intelligence Officer,
Directorate of Revenue Intelligence,
Cantonment, Trichy-620001.
F.No.DRI/CZU/TRY/VIII/48/ENQ-1/
INT-5/2021 DRI, Trichy..

... Respondent/Complainant

For Petitioner : Mr.K.Sivabalan,
Advocate.

For Respondent : C.Arul Vadivel @ Sekar,
Spl. Public Prosecutor

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

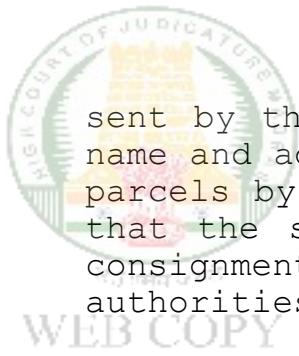
PRAYER :-

To enlarge the Petitioner on bail in the event of his arrest in connection with the case in F.No.DRI/CZU/TRY/VIII/48/ENQ-1/INT-5/2021DRI, Trichy. on the file of the Respondent Police and pass orders as this Hon'ble Court.

ORDER : The Court made the following order :-

The petitioner/accused, who apprehends arrest at the hands of the respondent police for the offences punishable under Section 135(1)(d) of Customs Act, 1962, registered by the respondent in F.No.DRI/CZU/TRY/VIII/48/ENQ-1/INT-5/2021DRI, Trichy, seeks anticipatory bail.

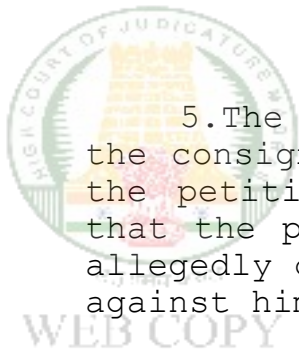
2.The case of the prosecution is that based on a specific intelligence that a smuggling gang comprising Shri.Mohamed Abuthagir of Thuvrankurichi and Mohamed Arif of Trichy among others are attempting to smuggle foreign origin gold by deeply and ingeniously concealed in the house hold articles, imported through Foreign Post office, Chennai in the guise of genuine Postal Parcels to evade detection during Customs Clearance, that the said parcel has been



sent by the gang's associates abroad by giving their known persons name and addresses, who are based around Trichy, as receivers of the parcels by mis-declaring the description and value of the items and that the said persons are making attempt to take delivery of the consignment from the post office by hoodwinking the Postal/Customs authorities.

3.It is the further case of the prosecution that in pursuance of the said intelligence, the Officers of Directorate of Revenue Intelligence (DRI), Trichy, narrowed down the suspected parcel having booking No.EE103766350AE originating from Dubai and addressed to one Shri.Subash Chandra Bose of Trichy, through open sources, that the consignment was opened in the presence of two independent witnesses, that the consignment consisted of food stuff, food containers, ladies bag, kitchen utensils, stainless steel stands, jerkin etc., that the Officers found some yellow color metal rods appeared to be gold, concealed in a deep manner and recovered the same, that the Officers have recovered totally 17 pieces weighing 2391 grams, that the Government approved Gold Assayer, who has found that the said items are of 24ct Gold of foreign origin totally weighing 2391 grams valued at Rs.1,17,39,810/-, that another team of Officers of DRI, Chennai, in pursuance of same intelligence, narrowed down another postal consignment bearing No.EE103766448AE, imported in the name of one R.Vinoth of Trichy at Foreign Post Office, Meenambakkam, Chennai and conducted detailed examination of the said consignment by following due procedure and recovered and seized 35 numbers of gold rods totally weighing 2694 grams valued at Rs.1,31,19,780,-/- under a Mahazar, dated 30.10.2021.

4.The learned Special Public Prosecutor appearing for the respondent would submit that they have summoned and recorded the voluntary statements of Shri.Mohammed Abuthagir and Shri.Mohammed Arif under Section 108 of Customs Act and in their statements that the petitioner Mohammed Azarudeen alone had sent the consignments addressed to some persons unconnected with the said consignment, that subsequently both the said persons viz. Mohammed Abuthagir and Mohammed Arif were arrested under Section 104 of Customs Act on 31.10.2021 at Trichy and were remanded to judicial custody, that they have also summoned and recorded the statement from the consignee namely, Shri.Subash Chandra Bose and came to know that the said Subash Chandra Bose had no knowledge about the gold consignment, that the Authorities have recovered mobile phones of said Mohammed Abuthagir and Mohammed Arif and came to know from the whatsapp chats of their mobile phones that the said consignments were found to be shared between the mobile phones of Mohamed Abuthagir and Mohamed Arif, that they have also found that some of the chats were found deleted and that the authorities have collected some evidence including digital evidence against the petitioner and that despite the issuance of notice under Section 108 of Customs Act, the petitioner has deliberately not participated in the



5.The petitioner's case is that he is neither the consignor nor the consignee of the parcels, but has been falsely implicated, that the petitioner has nothing to do with the consignments and gold, that the petitioner is employed in Dubai and that the transactions allegedly of the shop are now projected to be incriminating evidence against him.

6.The learned counsel for the petitioner would further submit that summons dated 14.03.2022 was issued to the native address of the petitioner, which was inadvertently received by someone, that the parental house of the petitioner was searched by the respondent on 06.11.2021 and no contraband or incriminating evidence has been seized and that the petitioner is willing to subject himself to due process of law and to co-operate with the investigation, if required.

7.The learned Special Public Prosecutor for the respondent would submit that the respondent has issued summons under Section 108 of Customs Act for the purpose of recording the statement of the petitioner, that the petitioner even after having knowledge about the issuance of summons, has failed to appear before the respondent and that the present application for anticipatory bail is premature and as such application is liable to be dismissed.

8.The learned Special Public Prosecutor has relied on the decision of Hon'ble Supreme Court in **Union of India Vs. Padam Narain Aggarwal** reported in **2008 (231) E.L.T. 397 (SC)** and the relevant passages are extracted hereunder.

"63.In the case on hand, the respondents were only summoned under Section 108 of the Act for recording of their statements. The High Court was conscious and mindful of that fact. It, therefore, held that applications for anticipatory bail, in the circumstances, were pre-mature. They were, accordingly, disposed of by directing the respondents to appear before the Custom Authorities. The Court, however, did not stop there. It stated that even if the Custom Authorities find any non-bailable offence against the applicants (respondents herein), they shall not be arrested "without ten days prior notice to them. 64. In our judgment, on the facts and in the circumstances of the present case, neither of the above directions can be said to be legal, valid or in consonance with law. Firstly, the order passed by the High Court is a blanket one as held by the Constitution Bench of this Court in Gurbaksh Singh and seeks to grant protection to respondents in respect of any non-bailable offence. Secondly, it illegally obstructs, interferes and curtails the authority of Custom Officers from exercising statutory power of arrest a person said to have committed a non-bailable offence by imposing a condition of giving ten days prior notice, a condition not



warranted by law. The order passed by the High Court to the extent of directions issued to the Custom Authorities is, therefore, liable to be set aside and is hereby set aside."

9. The learned Special Public Prosecutor has also relied on the judgment of High Court of Gujarat at Ahamdabad in **Abdulmunaf Mahmadarif Vohra Vs. State of Gujarat** in Crl.Misc.Application No.5176 of 2020, dated 25.06.2021.

"7.It is pertinent to note that the co-accused ie., Ravindra Chandrakantbhai Patel, who was issued summons under section 108 of the Customs Act, has approached this Court seeking anticipatory bail. The Coordinate Bench vide judgment dated 11.09.2020 passed in Criminal Misc.Application No.22910 of 2019 has rejected the application as premature, in light of the observations made by the Apex Court.

8.Thus, as per the law promulgated by the Apex court the summons under Section 108 of the Custom Act is only issued for recording the evidence and the High Court cannot direct the respondent authorities not to arrest such accused, as the anticipatory application would be premature at this stage. Even the direction issued by the High Court not to arrest such accused for limited period would be illegal and against the law."

and the High Court of **Kerala at Ernakulam in Sahal Vs.Senior Intelligence Officer, DRI, Kochi** in Bail Application No.270 of 2019, dated 12.04.2019 and the relevant passages are extracted hereunder :

"6.Opposing the application, Learned Special Prosecutor contended that the settled legal position is that he is not an accused and application for anticipatory bail is premature. It seems that in Romesh Chandra Mehta's case (supra), the Supreme Court had held that the summons under Section 108 of the Customs Act is intended to question a person and at that stage he cannot be stated to be an accused.

7.In Kishin S. Loungani's case (supra) an identical question was considered by a Division Bench of this Court. Contention of the Learned Counsel is that both the applications dealt with a totally different situation and does not relate a person who is summoned under Section 108 of the Customs Act apprehending arrest.

8.The Hon'ble Supreme Court in Padam Narain Aggarwal's case had specifically dealt with granting of anticipatory bail to a person summoned under Section 108 of the Customs Act and held that it was premature in nature."

10.It is also necessary to refer the judgment of Kerala High Court in **M.Sivasankar Vs. Superintendent of Customs, Ernakulam**
<https://hcservices.ecourts.gov.in/hcservices/>

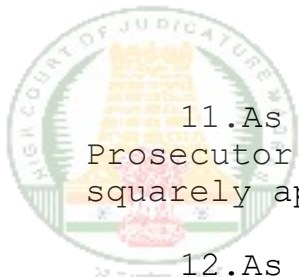


reported in 2021 (375) E.L.T.165 (Kerala) and the relevant passages are extracted hereunder:

"10. An offence under the Customs Act is undoubtedly an economic offence of grave nature and the Hon'ble Supreme Court has held in a number of cases, including in *P. Chidambaram v. Directorate of Enforcement* [2019 KHC 6886 SC (2019) 9 SCC 24], wherein it was held that power under Section 438 Cr.P.C. being an extraordinary remedy has to be exercised sparingly; more so, in cases of economic offences, and that economic offences stand as a different class as they affect the economic fabric of the society. The Court also relied on the earlier decisions of the Apex Court in *Directorate of Enforcement v. Ashok Kumar Jain ((1998) 2 SCC 105 : AIR 1998 SC 631)*, wherein it was held that in economic offences, the accused is not entitled to anticipatory bail. Similar was the view taken by the Apex Court in *Rohit Tandon v. Directorate of Enforcement* [2017 KHC 6767 : (2018) 11 SCC 46], wherein it was held that economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country. In *Y.S. Jagan Mohan Reddy v. CBI* [2013 KHC 4402 : (2013) 7 SCC 439], the Honourable Apex Court held that economic offences constitute a class apart and need to be visited with a different approach in the matter of bail.

11. The applicant has not yet been made an accused. But he apprehends arrest. There are no sufficient material to show that he will be arrested. Merely because he was questioned for 60 hours by the Customs Department does not indicate that he is intended to be made an accused.

12. The fact that the applicant was in constant contact with one of the prime witness, namely Swapna Suresh, and that he had even volunteered to help her by contacting his Chartered Accountant and asking him to assist her in managing her finances indicates that there is a fair possibility that applicant knew about the involvement of Swapna Suresh in the alleged smuggling activity. Whether the applicant was himself actively involved in the commission of the offence is something which is to be investigated and found out. Relying on the decision of the Honourable Supreme Court in *Padam Narain Aggarwal* (supra), I find that the power of the Customs Department to question the applicant under Section 108 cannot be curtailed by granting anticipatory bail. The relief sought for is undoubtedly premature. Therefore, I am of the opinion that the applicant is not entitled to anticipatory bail. The bail application, is therefore, dismissed."



11.As rightly contended by the learned Special Public Prosecutor appearing for the respondent, the above decisions are squarely applicable to the case on hand.

12.As already pointed out, admittedly, the respondent has issued summons under Section 108 of Customs Act to the petitioner for recording of statement and according to the prosecution, the same was issued on the basis of the statements recorded from the co-accused and the other materials collected, during the earlier investigation.

13.As rightly pointed out by the learned Special Public Prosecutor, totally 5085 grams of gold was recovered, which was valued at Rs.2,48,59,590/-.

14.The main contention of the petitioner is that the respondent has already conducted search in the parental house of the petitioner on 06.11.2021 and they have not recovered any contraband or incriminating evidence from the said house.

15.As rightly contended by the learned Special Public Prosecutor, non-recovery of any contraband or any other incriminating evidence from the parental house of the petitioner by itself, is not a ground to grant anticipatory bail and as per the settled legal position, the petitioner has to appear before the respondent, in pursuance of the summons issued to him under Section 108 of the Customs Act and after recording statement from him, it is for the investigating officer to decide about the further course of action.

16.It is pertinent to note that the Hon'ble Apex Court has specifically held that any direction of the High Court not to arrest the accused even for limited period would be illegal and against the law.

17.Considering the seriousness and gravity of the offence alleged and also the total quantity and value of the gold allegedly recovered and also the fact that the respondent has only issued summons under Section 108 of the Customs Act to the petitioner to appear for recording of statement and in view of the settled position of law above referred, this Court has no hesitation to hold that the petitioner is not entitled to get the relief sought for.

18.In the result, the Criminal Original Petition is dismissed.

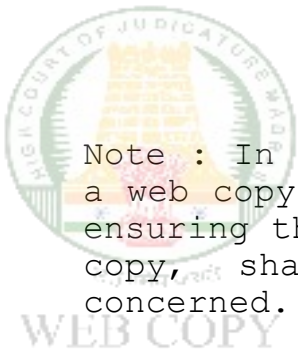
sd/-

18/05/2022

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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 SENIOR INTELLIGENCE OFFICER,
DIRECTORATE OF REVENUE INTELLIGENCE,
CANTONMENT,
TRICHY-620001.
2. THE SPECIAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.C.ARUL VADIVEL@SEKAR, Advocate (SR-4819[I] dated 19/05/2022)

+1 CC to M/s.K.SIVABALAN, Advocate (SR-4824[I] dated 19/05/2022)

ORDER
IN
CRL OP(MD) No.6955 of 2022
Date :18/05/2022

DAS
USK/PN/SAR-IV/31.05.2022/7P/5C