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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Dated: 29/08/2022

PRESENT

The Hon'ble Mr.Justice G.ILANGO VAN

Crl.OP(MD)Nos.15025 and 15044 of 2022

Backiyaraj

... Petitioner/Accused No.2
(in both Petitions)

Vs.

State rep. By
The Inspector of Police,
Mayanoor Police Station,
Karur District.
(In Crime No.233 of 2022).

... Respondent/Complainant
(in Crl.O.P.(MD)No.15025/2022)

State rep. By
The Inspector of Police,
Mayanoor Police Station,
Karur District.
(In Crime No.250 of 2022).

... Respondent/Complainant
(in Crl.O.P.(MD)No.15044/2022)

For Petitioner : Mr.M.Subash Babu, Advocate
(in both Petitions)

For Respondent : Mr.P.Kottai Chamy
Government Advocate(Criminal side)
(in both Petitions)

PETITION FOR BAIL under Sec.439 of Cr.P.C

PRAYER :-

For Bail in Crime No.233 of 2022 & Crime No.250 of 2022 on the file of the Respondent Police.

COMMON ORDER:- The Court made the following order:-

The petitioner in Crl.OP(MD)No.15025 of 2022, who is arrayed as
A2 apprehending arrest at the hands of the respondent police for the
alleged offences under sections 273, 328 IPC and section 24(1) of



Cigarette and other Tobacco Products Act, 2003, in Crime No.250 of 2022 on the file of the respondent seeks anticipatory bail, whereas the petitioner in CrI.OP(MD)No.15044 of 2022, who is arrayed as A2 apprehending arrest at the hands of the respondent police for the alleged offences under sections 328 IPC and section 24(1) of Cigarette and Other Tobacco Products Act, 2003, in Crime No.250 of 2022 seeks anticipatory bail.

2.The case of the prosecution in brief:-

So far as CrI.OP(MD)No.15025 of 2022 is concerned, Crime No.233 of 2022 on the file of the respondent police. The case of the prosecution, as per the complaint is that the de-facto complainant is the Police Officer, attached to the respondent police and on secrete information, they were on look out for suspect persons and on 22/07/2022, they found some suspicious packages near A1's house. On search, they found containing 323 packets of banned tobacco, other tobacco products and panmasala. On enquiry, A1 stated that only A2 supplied the above said banned articles to him for the purpose of sale. On the basis of the statement, he was arrested and remanded to the judicial custody. On the basis of the confession statement of A1, the involvement of the petitioner came to light and he is arrayed as A2. It was found that totally 169.600 kgs of tobacco products were found.

3. Seeking anticipatory bail, this petition came to be filed.

4. In so far as CrI.OP(MD)No.15044 of 2022 is concerned, the case of the prosecution is that the de-facto complainant along with police party were on routine check up with regard to the banned tobacco products. On 05/08/2022, they found A1 in possession of the above said banned tobacco products. So, he was enquired and he has stated that only this petitioner, who is arrayed as A2 supplied the above said tobacco products for the purpose of sale. He further revealed that the petitioner used to purchase the same from Karnataka and supplied to various persons in Tamil Nadu. On the basis of the above said occurrence, the case was registered.

5. Seeking anticipatory bail, this petition came to be filed.

6. Heard both sides.

7. It is the contention on the part of the petitioner to the effect that except section 328 IPC, all the other offences are bailable in nature. Even as per the Division Bench Judgement of this court, tobacco will come under the definition of food and at no stretch of imagination, it can be construed as a poisonous object or injurious in nature. So according to the learned counsel appearing for the petitioner, there is no prima facie ground to implicate this petitioner for the offence under section 328 IPC.



8. But it has been held not only by this court, but also by the Coordinate Bench of this court to the effect that in the facts and circumstance of this case, section 328 IPC will be attracted. But however, in another matter, the learned counsel appearing for some other accused has submitted that the finding of the Bombay High court, which held that section 328 IPC will be attracted in such matters, interim bail were granted to all the accused persons in concerned in the tobacco products ban orders. Now whatever it may be, now the position is to the effect that section 328 IPC may also be attracted, since it has been held by the Division Bench of this court to the effect that it is injuries to health. So when that being so, the contention on the part of the petitioner to the effect that it is not injurious to health and section 328 IPC may not be attracted cannot be accepted.

9. When huge quantity of the banned products have been recovered from A1 in each cases and when there is implication to the effect only this petitioner supplied the same, either for the purpose of safe storage or for purpose of retail selling, the petitioner must be subjected to custodial interrogation to find out his involvement.

10. So in both matters, I find that the petitioner is not entitled for anticipatory bail, since he is involved in two successive cases. Even though, it has been submitted on the side of the petitioner to the effect that both cases are foisted one, I find that no such argument can be acceptable.

11. For all the reasons stated above, both the criminal original petitions are liable to be dismissed.

12. In the result, both criminal original petitions are **dismissed**.

Sd/-
29/08/2022

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/09/2022
Sub-Assistant Registrar (C.S.II)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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1. THE INSPECTOR OF POLICE,
MAYANOR POLICE STATION,
KARUR DISTRICT.
2. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER
IN
Crl.OP (MD) Nos.15025
and 15044 of 2022
Date :29/08/2022

SP/SVR/SAR II/07/09/2022/4P/3C