



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.03.2023

PRESENT

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

WEB COPY

CRL.O.P(MD)No.2054 of 2023

Abdul Ashik

...Petitioner/Accused No.2

-vs-

Superintendent of Customs,
Air Intelligence Unit (AIU),
Madurai Airport,
Madurai

(Case OR.No.1/2022-AIU-MDU)

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 438 of Cr.P.C, praying to enlarge the petitioner on bail in the event of his arrest by the respondent Police with respect to Case OR.No.1/2022-AIU-MDU.

For Petitioner : Mr.M.Asif Mohamed, Advocate

For Respondent : Mr.Arul Vadivel @ Sekar
Senior Counsel
Special Public Prosecutor for Customs,

O R D E R

The petitioner, who apprehends arrest at the hands of the respondent Police for the offences punishable under Sections 8(c), 22, 23, 28, 29 of NDPS Act, 1985 in C.C.No.881 of 2022 on the file of the respondent, seeks anticipatory bail.

2.The case of the prosecution, as per the de-facto complainant is that on 08.01.2022 one air passenger by name Shakil Ahamed holding passport No.N3521229, 14-22A attempted to smuggle 500 gms of Amphetamine through Madurai Airport to Colombo and was arrested and he had confessed that the contraband was handed over by one Abdul Ashik, the petitioner herein. Based on that, the case in OR.No.1/2022-AIU-MDU came to be registered.

3.The learned counsel for the petitioner would submit that the petitioner is an innocent and he has been falsely implicated in this case. He would also submit that other than the confession alleged to have been recorded from the first accused Shakil Ahamed, there is no material to connect the petitioner with the crime. He would also



submit that the said Shakil Ahamed was arrested and subsequently he was released on statutory bail and thereby he would seek for anticipatory bail to the petitioner.

4. The learned Senior Counsel appearing for the respondent has filed a detailed counter.

5. The learned Senior Counsel would submit that it is a case where the petitioner who is maternal uncle of Shakil Ahamed had handed over 500 gms of Amphetamine to be smuggled to Srilanka. He would further submit that there are call details to show that the petitioner was in constant touch with the person, who was arrested and subsequently, the petitioner was issued with summons and it was unable to be served on him and after obtaining orders from the court, search was conducted in his house and during search, remnants of the same material which was attempted to be smuggled were collected from his residence. Further, he is absconding till date and call details between the petitioner and the arrested accused along with the confession would prove that the petitioner is a person, who is the owner of the contraband. He would reiterate that the petitioner has to satisfy Section 37 of NDPS Act for grant of anticipatory bail and he has failed to do so. There are presumptions under Section 35 of NDPS Act and the petitioner has to rebut the presumptions and it can be done only at the time of trial and his custodial interrogation is very much required. He would emphasize that the quantity of contraband recovered is commercial quantity and he would pray for dismissal of this application.

5. Heard and perused the materials available on record.

6. Apart from the confession of the arrested accused, it is seen that there are also records to show that the petitioner was in constant touch with the arrested accused. This Court is of the opinion that the petitioner has not satisfied the condition required under Section 35 of NDPS Act. Further, the contraband recovered is commercial quantity. In view of the above, this Court is not inclined to grant anticipatory bail to the petitioner and this petition is dismissed.

sd/-

02/03/2023

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



CRL.O.P(MD)



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- 1 THE SUPERINTENDENT OF CUSTOMS
AIR INTELLIGENCE UNIT (AIU),
MADURAI AIRPORT,
MADURAI.
- 2 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL OP (MD) No.2054 of 2023
Date :02/03/2023

PKP/BUC/SAR-3/17.03.2023/ **3P/3C**