



WEB COPY

CRL OP(MD). N



22

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 08/03/2023

PRESENT

The Hon`ble Mr.Justice G.K.ILANTHIRAIYAN

CRL OP(MD). No.22547 of 2022

Ravikumar

... Petitioner/Accused Rank Not Known

Vs

The Senior Intelligence Officer,
Directorate of Revenue Intelligence,
No.22/14, Roche Colony,
Tuticorin-1.

(File No.DRT/CZU/TTN/VII/48/17/INT-1/2022).

... Respondent/Complainant

For Petitioner : M/s.Lawrance J,
Advocate.

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

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

PRAYER :-

To enlarge the Petitioner on bail in the DRT/CZU/TTN/VII/48/17/INT-1/2022 on the file of the Respondent and pass such further or other orders as this Honble 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 sections 104 r/w.135 of the Customs Act and 135(1)(i)(A) of Customs Act 1962 in DRT/CZU/TTN/VII/48/17/INT-1/2022 on the file of the respondent police, seeks anticipatory bail.

2. The case of the prosecution is that on 17.10.2022 the respondent herein based on specific Intelligence inputs that gold items are being smuggled into India from Srilanka through Mandapam Coast and the smuggled goods were being carried and transported by a person in a two wheeler bearing Reg. No. TN 65 AP7890 for handing over the same to the various jewellers at Ramanathapuram Town, the officials attached to the respondent unit kept strict vigil and have inspected the said two wheeler driven by one Mohammed Umama near the Mariyamman temple at Sayakkara Street, Aranamanai Road,



Ramanathapuram District and on search in the two wheel respondent noticed that Mohamed Umama had been carrying gold smuggled from Srilanka in two bags and after examination, they found 23031 grams of gold worth about Rs.12 crores.

3. The learned counsel for the petitioner would submit that only on the basis of the confession statement from the first accused he has been implicated as an accused. On the confession recorded from the co-accused the petitioner was issued summon. Interim protection was given to the petitioner by this Court. The petitioner had appeared before the respondent for enquiry. Infact the said Mohammed Umama was arrested and subsequently released on bail. He would further submit that even before the court below the respondent filed counter and stated that the petitioner's custodial interrogation is very much required and as such the petitioner is apprehending arrest at the hand of the respondent.

4. The learned Senior Counsel appearing for the respondent filed counter and stated that on receipt of secret information that gold items are being smuggled into India from Srilanka through Mandapam Coast and the smuggled gold were being carried and transported by a person in a two wheeler bearing Reg. No. TN 65 AP7890, they intercepted the said person by name Mohammed Umama and found that he was carrying gold smuggled from Srilanka in two bags. Thereafter recovery was made and statement was recorded under section 108 of the Customs Act, which is admissible in evidence. The respondent also collected so many materials inorder to connect the petitioner with the crime. Only on the basis of the order placed by the petitioner the entire gold jewels, bar, ornaments were smuggled from Srilanka. The petitioner is a proprietor of Ayothiraman Jewellers at Ramanathapuram Town. The entire jewels weighing 23031grams worth about Rs.11,96,80,592/- was illegally possessed by Mohammed Umama without paying proper duty. Therefore it is liable to be confiscated under the provisions of customs Act. On his voluntary statement dated 17.10.2022 he had collected packets containing smuggled gold from one Ameer Ahmed and as per the instructions of another person namely Sulthan he has proceeded to hand over the same to one Kumar and other unnamed persons at Ramanathapuram Town. He had earlier involved in smuggling activities 10 times and all the times he had handed over the smuggled gold to said Ravikumar , the petitioner herein. He has also given the mobile number of Shri. Ravikumar whom he had handed over the smuggled gold at Ramanathapuram. He had also sent photos of the jewellery and ornaments to him inorder to purchase the same. Further Mohamed Umama was clearly instructed by the conspirators to hand over the smuggled gold parcel marked as "KV" to Shri Ravikumar, which was intercepted by the officials. He also relied on the decision of the Hon'ble Supreme Court in the case of **Union of India vs. Padam Narain Agarwal** reported in **2008 (231) ELT 397 (SC)** , wherein it is held that the acused persons were only summoned under section 108 of the Act



for recording of their statements. The High court was conscious and mindful of that fact and 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 customs authorities. The Court, however, did not stop there. It stated that even if the Custom Authorities found any non bailable offence against the applicants (respondents herein) they shall not be arrested "without ten days prior notice to him". 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 the 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, whereas in the case on hand, even according to the respondent one Mohamed Umama was in possession of jewels, ornaments, and also gold bar which was seized by the respondent and recorded statement. As per the statement recorded from the other accused the petitioner was served with summons and interim protection was also granted to the petitioner and the petitioner has also appeared before the respondent for enquiry.

5. On perusal of the counter filed by the respondent before the court below also reveals that the custodial interrogation of the petitioner is very much required and as such there is real apprehension of arrest, hence the petitioner has approached for anticipatory bail before this Court. In this case pursuant to the arrest at the hands of the respondent interim protection was given. Further the said Mohamed Umama who has given confession statement to connect the petitioner was also arrested and subsequently released on bail. The petitioner is the Proprietor of Ayothiraman Jewellers at Ramanathapuram. That apart the entire jewels which were alleged to have been smuggled by Mohammed Umama were recovered by the respondent. Therefore custodial interrogation of the petitioner is not required, hence this Court is inclined to grant bail to the petitioner.

6. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on his appearance, within a period of fifteen days from the date on which the order copy made ready, before the learned Additional Chief Judicial Magistrate, Madurai on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two blood related sureties each for a like sum to the satisfaction of the respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned, failing which, the



petition for anticipatory bail shall stand dismissed and on the condition that:

[a] the petitioner and the sureties shall affix their photographs and Left Thumb 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 respond to police daily at 10.30 am., for a period of two weeks and thereafter as and when required for interrogation.

[c] 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/Trial Court 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 under Section 229A IPC.

sd/-

08/03/2023

/ TRUE COPY /

/03/2023

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

AAV

TO

1 THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE, MADURAI.

2 THE SENIOR INTELLIGENCE OFFICER,
DIRECTORATE OF REVENUE INTELLIGENCE,
NO.22/14, ROCHE COLONY, TUTICORIN-1.

3 THE SPECIAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.J.LAWRANCE, Advocate (SR-3733[I] dated 09/03/2023)

ORDER

IN

CRL OP(MD) No.22547 of 2022

Date :08/03/2023

RS/CG/SAR-4(29.03.2023) 4P 5C