



Crl.O.P.(MD) No.23520 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

[Criminal Jurisdiction]

Date : 28.12.2023

PRESENT

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

Crl.O.P.(MD) No.23520 of 2023

Amjathkhan

... Petitioner/2nd Accused

Vs

The State Represented by its
The Inspector of Police,
Thiruvegampet Police Station,
Sivagangai District.
(Crime No.139 of 2023)

... Respondent

For Petitioner : Mr.K.Yasar Arafath, Advocate

For Respondent : Mr.B.Thanga Aravindh
Government Advocate (Criminal side)

PRAYER: Criminal Original Petition filed under Section 439 of the Criminal Procedure Code, 1973 (Act No.2 of 1974) praying to grant bail to the petitioner/A2 in Crime No.139 of 2023 on the file of the respondent police.

ORDER : The Court made the following order :-

This Criminal Original Petition has been filed by the petitioner on 26.12.2023



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under Section 439 of the Criminal Procedure Code, 1973 (Act No.2 of 1974) praying to grant bail.

2. The petitioner/second accused was arrested and remanded to judicial custody on 28.11.2023 for the alleged offences punishable under Sections 273 and 328 of the Indian Penal Code, 1860 (Act No.45 of 1860); Section 24(1) of the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (Act No.34 of 2003); and Section 77 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (Act No.2 of 2016) in Crime No.139 of 2023 on the file of the respondent police.

3. The case of the prosecution is that on 28.11.2023, when the police were on patrolling, based on the secret tip, they found that the petitioner and other accused were in illegal possession of 44kgs of banned tobacco products for the purpose of selling the same to the school children. Hence, the case.

4. The learned counsel for the petitioner submitted that the petitioner is an innocent and has not committed any offence as alleged by the prosecution. He further submitted that based on the confession statement given by A1, the petitioner was arrested and he is in judicial custody since 28.11.2023. Accordingly, he prayed to grant bail to the petitioner.



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5. The learned Government Advocate (Criminal side) appearing for the respondent police submitted that the petitioner and other accused were in illegal possession of 44kgs of banned tobacco products worth about Rs.26,000/-. He further submitted that the petitioner has one previous case; that investigation is not yet completed; and that at this stage of investigation, if bail is granted to the petitioner, he will cause threat to the defacto complainant and witnesses. Accordingly, he prayed to dismiss this Criminal Original Petition.

6. Heard on both sides. This Court has perused the records.

7. The respondent police seized 44kgs of banned tobacco products from the petitioner and A1. The petitioner was arrested on 28.11.2023 and has been incarcerated for the past 30 days. The petitioner has permanent residence and deep roots in the society. Hence, there is less possibility of absconding. Hence, considering the above reasons, with a view to give one more opportunity to reform himself and also considering the nature of the offence allegedly committed by the petitioner, this Court is inclined to grant bail to the petitioner, however subject to conditions. Accordingly, bail is granted to the petitioner subject to the following conditions:



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(i) The petitioner shall execute a bond for Rs.25,000/- (Rupees Twenty Five Thousand only) and furnish two sureties, of which, one shall be a blood relative surety each for a like sum of Rs.25,000/- (Rupees Twenty Five Thousand only) to the satisfaction of the learned Judicial Magistrate, Devakottai;

(ii) The sureties shall affix their photographs and left thumb impression in the Application for Suretyship [Judicial Form No.46 annexed to 'The Criminal Rules of Practice, 2019']. The learned Judicial Magistrate shall obtain a copy of any one of identity proofs to ensure their identity;

(iii) The petitioner shall appear and sign before the concerned Jurisdictional Magistrate, Devakottai on all working days at 10.00 a.m., until further orders;

(iv) The petitioner shall not, directly or indirectly, cause any threat to the defacto complainant and witnesses; and

(v) On breach of any of the aforementioned conditions, the learned Judicial Magistrate is entitled to pass appropriate orders against the petitioner in accordance with law as if the aforementioned conditions are imposed by themselves as laid down by the Hon'ble Supreme Court in **P.K.Shaji Vs. State of Kerala** [(2005)13 SCC 283].



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8. Accordingly, this Criminal Original Petition is allowed subject to the conditions stated *supra*.

sd/-
28/12/2023

/ TRUE COPY /

29/12/2023
Sub-Assistant Registrar ()
Madurai Bench of Madras High Court,
Madurai - 625 023.

SJI
TO

- 1 THE JUDICIAL MAGISTRATE,
DEVAKOTTAI.
- 2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
SIVAGANGAI DISTRICT.
- 3 THE INSPECTOR OF POLICE
THIRUVEGAMPET POLICE STATION,
SIVAGANGAI DISTRICT.
- 4 THE OFFICER INCHARGE,
DISTRICT JAIL, RAMANATHAPURAM.
- 5 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1 CC to M/s.K.YASAR ARAFATH, Advocate (SR-18378[I] dated 28/12/2023)

ORDER
IN
CRL OP(MD) No.23520 of 2023
Date :28/12/2023

SS/SAR- /29/12/2023/5P/7C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023