



CRL OP(MD). No.6340 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 18.06.2024

PRESENT

THE HON'BLE MR.JUSTICE B.PUGALENDHI

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Palani

... Petitioner/ Accused Rank Not Known

Vs

The Senior Intelligence Officer,
Directorate of Revenue Intelligence,
Regional Unit.

Trichy - 620 001

... Respondent/ Complainant

[F.No.DRI/CZU/TRY/VIII/48/Enq-01/INT-15/2023]

For Petitioner : Mr.B.Anandan,Advocate

For Respondent : Mr.Arul Vadivel @ Sekar

Special Pubic Prosecutor

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

PRAYER :-

For Anticipatory Bail in F.No.DRI/CZU/TRY/VIII/48/Enq-01/INT-15/2023 on the file of the respondent police.

ORDER : The Court made the following order :-

The petitioner apprehending arrest at the hands of the respondent police in connection with the case in F.No.DRI/CZU/TRY/VIII/48/Enq-01/INT-15/2023, for



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the offence under 135(1)(b) of the Customs Act has filed this petition seeking anticipatory bail.

2. The case of the prosecution is that the respondent police officials based on the secret information intercepted a car and recovered gold jewels weighing 7,828.800 gms from A1 and A2. Based on the statement recorded from A1 and A2 the respondent has issued summons to the petitioner under Section 108 of the Customs Act, 1962 on 17.04.2024 directing the petitioner to appear before the respondent on 25.04.2024 for enquiry. The petitioner instead of appearing before the respondent has approached this Court. This Court by order dated 26.04.2024 directed the petitioner to appear before the respondent and to co-operate for enquiry. Accordingly this petitioner has appeared before the authority concerned. The respondent has filed a status report that one Anifa Shaib has engaged this petitioner and another for collecting gold from unknown persons in mid-sea. The petitioner, who appeared before the respondent on 16.05.2024 and also gave a statement under Section 108 of the Customs Act that one Anifa Sahib called him on 29.11.2023 over mobile phone and informed him that he collected the gold in the mid-sea, which was smuggled from Sri Lanka via Nagapattinam. The petitioner on 29.11.2023 went to the mid sea by boat along with a masked man, who had received the smuggled gold and handed over it to the said Anifa Shaib. The petitioner identifies that the masked man as one



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Kumar, whose mobile number is saved as PKD Bus by the said Anifa Shaib.

The petitioner has exchanged the details of smuggling of gold many a times and he received Rs.5,000/- as commission. The petitioner further stated that one Raju, on whose instructions gold is smuggled, has spoken with him over phone several times in this regard. Whenever the petitioner smuggles gold, he would inform the same to the said Raju over phone and this time too has informed so.

3.The learned Special Public Prosecutor appearing for the respondent submits that the statement recorded under Section 108 of the Customs Act is admissible in evidence and the materials collected reveals that this petitioner has actively involved in smuggling of gold and the value of the gold recovered in this case is Rs.5,06,13,192/-. The learned Special Public Prosecutor has relied on the decision of the Hon'ble Supreme Court in Union of India Vs Padam Narain Aggarwal reported in (2008) 13 SCC 305 and submits that anticipatory bail shall not be granted when the proceeding under Section 108 of the Customs Act is underway.

4.The learned Counsel for the petitioner submits that even as per the statement as projected by the investigation agency, he is said to have collected the gold by receiving Rs.5,000/-. The learned Counsel has also relied on the various judgment of the High Courts and submits that anticipatory bail can be granted at this stage and the respondent is selectively preferring appeals. The learned Counsel for the



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petitioner has also pointed out that for this offence under Section 135(1)(b) of the Customs Act, the punishment is only upto seven years term and therefore, as per the ratio laid down by the Hon'ble Supreme Court in Arnesh Kumar Vs State of Bihar, reported in AIR 2014 SC 2756, the petitioner is entitled for anticipatory bail.

5.This Court considered the rival submissions and perused the materials placed on record.

6.If any person acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with the goods which he knows or has reason to believe are liable to confiscation and it is an offence with imprisonment for term which may extend to a term upto 7 years with fine. The Constitution Bench of the Hon'ble Supreme Court in Ramesh Chandra Mehta Vs State of West Bengal reported in (1969) 2 SCR 461, held that a person called upon to make a statement before the Custom Authorities cannot be said to be an accused of an offence. It is therefore, clear that if a person is called upon to make a statement under Section 108 of the Act and summon is issued for the said purpose, he is bound to comply with such direction. But instead of appearing before the respondent, the petitioner has filed this petition. Further on the direction of this Court, the petitioner has appeared before the respondent and has also given statement and in the statement he has admitted that he



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has received smuggled gold and smuggled it to Pattukottai and handed over the same to one Anifa Shahib. The quantity of the gold recovered in this case is 7,828.800 grams worth more than Rs.5 crore. The petitioner has also given a statement that he has involved in smuggling activities for seven times in the past. The investigation in the initial stage and some of the accused have to be secured and therefore, this Court is not inclined to grant anticipatory bail to the petitioner at this stage. Accordingly, this criminal original petition is dismissed.

sd/-
18/06/2024

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/07/2024
Sub-Assistant Registrar
(C.S.I /II /III /IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

SJI
TO

- 1 THE SENIOR INTELLIGENCE OFFICER,
DIRECTORATE OF REVENUE INTELLIGENCE,
REGIONAL UNIT, TRICHY-620 001.
- 2 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.



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+1 CC to M/s.B.ANANDAN, Advocate (SR-6766[I] dated 20/06/2024)

ORDER
IN

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Date :18/06/2024

PKP/GS/SAR /03.07.2024/ 6P/ 4C

Madurai Bench of Madras High Court is issuing certified
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