

Crl.R.C.No.144 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 27.03.2024  
PRONOUNCED ON : 04.06.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.144 of 2024

1.Shri.M.Tangkeswaran  
2.Amt.T.Nandhini

... Petitioners

Vs.

State represented by its  
Assistant Commissioner of Customs,  
Customs Preventive Unit,  
Coimbatore.

... Respondent

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to set aside the order dated 22.09.2023 passed in Crl.M.P.No.22691 of 2023 by the learned Chief Judicial Magistrate, Coimbatore and consequently direct the return of Petitioners' Malaysian Passports bearing Nos.A55506477 and A55506479 respectively.

For Petitioners : Mr.K.M.Kalicharan  
For Respondent : Mr.N.P.Kumar,  
Special Public Prosecutor

ORDER

The petitioners who are facing trial in C.C.No.1698 of 2022 for offence under Sections 135(1)(a) and 135(1)(b) of The Customs Act, 1962 before the learned Chief Judicial Magistrate, Coimbatore, have filed a



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petition under Section 451 of Cr.P.C., in Crl.M.P.No.22691 of 2023 in C.C.No.1698 of 2022 seeking return of Malaysian Passport No.A55506477 (1<sup>st</sup> petitioner) and Malaysian Passport No.A55506479 (2<sup>nd</sup> petitioner). The trial Court *vide* impugned order, dated 22.09.2023 dismissed the petition. Against which, the present criminal revision case is filed.

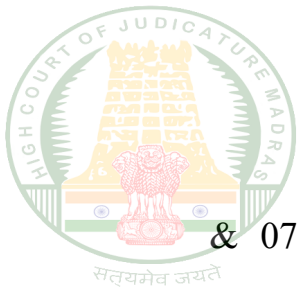
2.Gist of the case is that on 29.04.2022, the respondent received information that four Malaysian passengers by named Tangkeswaran/1<sup>st</sup> petitioner, Nandhini/2<sup>nd</sup> petitioner, Komathi and Mangaleswari coming from Singapore to Coimbatore by Scoot Airlines on 29.04.2022 and they were carrying gold bars by concealing the same either in person or in their checked-in baggage/hand luggage. The respondent was keeping close watch in presence of independent witnesses and the said four passengers identified and intercepted. It was found that the 1<sup>st</sup> petitioner was carrying small shoulder bag and checked-in luggage, the 2<sup>nd</sup> petitioner his relative was carrying small handbag and checked-in luggage. The other two passengers named Komathi and Mangaleswari were carrying one checked-in luggage each. The handbag of the petitioners were searched and heavy object concealed by wrapped in off-white coloured adhesive tape in the shoulder



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bag of the 1<sup>st</sup> petitioner and one heavy object wrapped in off-white coloured adhesive tape in the hand bag of the 2<sup>nd</sup> petitioner found. When they were enquired about the same, both informed that it was gold bars of foreign origin. Thereafter, from the 1<sup>st</sup> petitioner 2.100 kgs of gold bar and from the 2<sup>nd</sup> petitioner 2.100 kgs of gold bar totally six yellow colour metal bars recovered from them. The gold bars are 24 carat purity, it was valued around Rs.2,25,54,000/- as on that day. Thereafter, the petitioners were arrested, gold bars seized, their travel documents including passports seized by the respondent since the act of the petitioners are in violation under the provisions of The Customs Act, 1986.

3.Later, the petitioners were granted bail by this Court on 09.06.2022 in Crl.O.P.No.12967 & 12969 of 2022 with certain conditions. In the meanwhile, confiscation proceedings initiated by the Additional Commissioner of Customs, Headquarters, Trichy in Order-in-Original No.31/2023 and 24 carat foreign origin gold bars weighing 4.200 kgs valued around Rs.2,25,54,000/- confiscated and penalty imposed. Aggrieved over the same, the petitioners preferred an appeal before the Commissioner of GST and Central Excise (Appeals), Coimbatore in Order-in-Appeal Nos.06



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& 07/2024. The Commissioner (Appeals) by order, dated 07.03.2024 confirmed the confiscation and reduced penalty to Rs.70,00,000/- to the 1<sup>st</sup> petitioner and Rs.1,00,000/- to the 2<sup>nd</sup> petitioner. Now, the investigation completed and complaint filed in C.C.No.1698 of 2022 before the trial Court.

4.The learned counsel for the petitioners submitted that the father of the 1<sup>st</sup> petitioner Muniyandi, who is aged about 83 years admitted in Intensive Care Unit, Bagan Specialist Hospital and there is nobody to take care of his father, hence, the 1<sup>st</sup> petitioner needs his passport to visit Malaysia to take care of his ailing father. Likewise, the 2<sup>nd</sup> petitioner is having three children named Divaasini, Daresjan and Sheveendra. Her son Sheveendra is suffering from epilepsy, he is under treatment and medication. The mother of the 2<sup>nd</sup> petitioner named Krishnaveni Ponnusamy is now aged about 59 years and she also fell ill and taking treatment. The 2<sup>nd</sup> petitioner's children are staying in neighbours house without much care. Hence, to take care of her children and to make arrangements for her children safety and welfare, she requires release of passport to visit Malaysia. The learned counsel further submitted that earlier, the petitioners filed petition seeking



return of passport before the trial Court and the same was dismissed.

Challenging the same, the petitioners preferred revision before this Court in CrI.R.C.Nos.1136 & 1137 of 2022 and this Court by order, dated 16.09.2022 dismissed the revision petition with a direction to the trial Court to dispose of the main case as expeditiously as possible. Now, it is almost nine months from the date of that order, but till now the case is at the initial stage.

5.The learned counsel further submitted that after the arrest, the petitioners were granted bail by this Court in CrI.O.P.Nos.12967 & 12969 of 2022 on 09.06.2022 with directions to the petitioners to deposit Rs.10,00,000/- each to the credit of F.No.DRI/CRU/VIII/ 48/ENQ1/INT-2/2022-CBE on the file of the respondent and execute bond for sum of Rs.50,000/- each with two sureties each for a like sum to the satisfaction of the trial Court. In obedience to the order, the petitioners deposited the said amount and were released on bail. Thus, the petitioners already deposited substantial amount of Rs.10,00,000/- each. Further, the gold bars valued around Rs.2,25,54,000/- confiscated and detained by the respondent. The confiscation proceedings are challenged by the petitioners in Order-in-Appeal Nos.06 & 07/2024 and penalty imposed by the Additional



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Commissioner of Customs, Headquarters, Trichy in Order-in-Original

No.31/2023 reduced. The petitioners being a foreign nationals, they are permitted to redeem gold bars and take it back to Malaysia if proper duty is paid.

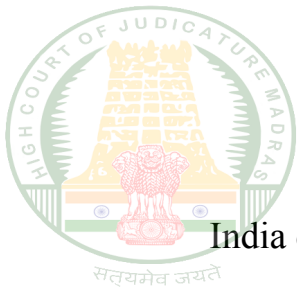
6.He further submitted that the petitioners have got no bad antecedents of similar activities earlier. Due to the above case, they are forced to stay in India having no support and income. The petitioners are facing great difficulty to sustain themselves. Added to it, the trial is also getting delayed. If the petitioners are permitted to travel Malaysia, they will come back after a short stay and the petitioners shall appear before the trial Court and for the adjudication proceedings as and when directed and they will not be a reason for any delay. He further submitted that there is Extradition Treaty between the Government of the Republic of India and the Government of Malaysia, hence, the respondent's apprehension of the petitioners' abscondness is unfounded. Making the above submissions, the learned counsel for the petitioners prays to set side the impugned order.

7.Mr.N.P.Kumar, learned Special Public Prosecutor appearing for the



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respondent Police submitted that the petitioners are foreign nationals, on their arrival at Coimbatore Airport, they were found indulging in smuggling of gold bars, hence, arrested. At the time of arrest, the passports of the petitioners were left at the desk of officers. For safe custody, the same produced before the trial Court, hence, it is not a case of seizure. Further submitted that in this case, the complaint filed and the same was taken on file in C.C.No.1698 of 2022 and the petitioners are facing trial for offence under Sections 135(1)(a) and 135(1)(b) of The Customs Act, 1962. The petitioners are facing serious charges punishable maximum imprisonment of five years. If the passports are returned, they would not return back to India and the trial will be pending for long years. He further submitted that the petitioners' earlier petition seeking return of passport was dismissed by the trial Court which was confirmed by this Court by a detailed order in Crl.R.C.Nos.1136 & 1137 of 2022 on 16.09.2022 referring to the decision in “*S.T.Gomer v. Assistant Collector of Customs* reported in *1989 SCC OnLine Mad 506*” wherein this Court had held that in the case of foreigners involved in grave offence and when there is likelihood of fleeing from justice, withholding of the passport by the criminal Court cannot be faulted with. Here, in this case, the purpose for which the petitioners to go out of



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India does not appear to be one of grave emergency.

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8.It is further submitted that the trial Court considering likelihood of the petitioners fleeing justice and considering the seriousness of charge faced by them, withhold their passport which is as per the dictum by this Court in ***S.T.Gomer case***. In this case, there are only nine witnesses, the trial itself can be completed within a stipulated period. The delay in completion of trial within six months as directed by this Court is not because of the respondent. Since the Chief Judicial Magistrate post was vacant from 05.09.2023 and the present Presiding Officer took charge only on 21.02.2024, hence, some delay. Now, the charges framed and the case is posted for trial. In any event, the trial itself can be completed within a short period. Hence, opposed return of passports.

9.This Court considered the rival submissions and perused the materials available on record.

10.It is seen that the petitioners arrested and detained by the respondent on 29.04.2022 since they were found in possession of yellow



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metal/gold bars to the tune of 4.200 kgs valued around Rs.2,25,54,000/-

without any permission or license. The petitioners admitted smuggling of gold, not declaring to the customs authorities and they were intercepted while passing green channel. The petitioners arrested, gold bars seized and now confiscated. The petitioners were later granted bail by this Court in Crl.O.P.Nos.12967 & 12969 of 2022 on 09.06.2022 with a direction to deposit Rs.10,00,000/- each apart from other conditions. In obedience to the order, the petitioners deposited the said amount. The contraband gold confiscated in Order-in-Original No.31/2023, dated 06.03.2023 and further the petitioners directed to pay penalty of Rs.1,10,00,000/-. Aggrieved over the same, the petitioners filed Order-in-Appeal in Nos.06 & 07 of 2024 wherein confiscation confirmed, penalty as against the 1<sup>st</sup> petitioner reduced to Rs.70,00,000/- and penalty imposed on the 2<sup>nd</sup> petitioner reduced to Rs.1,00,000/-.

11.In the confiscation proceedings/appeal, as regards 2<sup>nd</sup> petitioner is concerned, lenient view taken since her intention was to come to India, visit Temple and she had no idea about gold being smuggled by the 1<sup>st</sup> petitioner or about his plan of smuggling in collusion with one V.Girinath. The 2<sup>nd</sup>



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petitioner found to be an unsuspecting traveller who trusted the 1<sup>st</sup> petitioner who was taking three women on a tour to India for temple visits. It is observed in the adjudication proceedings order, the packet containing gold was kept in the handbag of the 2<sup>nd</sup> petitioner who lacks intelligence and common sense to refuse the same. Added to it, the 2<sup>nd</sup> petitioner being a foreign national, she might not be aware of Indian law of bringing gold as bar and to what extent it is permissible. Based on the statement given under Section 108 of The Customs Act, 1962, the appellate authority had come to the conclusion that 2<sup>nd</sup> petitioner has got no knowledge about the act and intention of the 1<sup>st</sup> petitioner. This statement before the customs authority was not refuted or countered by the 1<sup>st</sup> petitioner or V.Girinath. The finding is that the evidence pointed towards the innocence of the 2<sup>nd</sup> petitioner and her mistake seems to be accompanied the 1<sup>st</sup> petitioner and allowed him to keep the gold bar in her bag.

12.It is seen that the 2<sup>nd</sup> petitioner already deposited Rs.10,00,000/- as per the order of this Court, dated 09.06.2022 in Crl.O.P.Nos.12967 & 12969 of 2022 to the credit of F.No.DRI/CRU/VIII/ 48/ENQ1/INT-2/2022-CBE by way of demand draft. The 2<sup>nd</sup> petitioner's son Sheveendra aged 10 years, is



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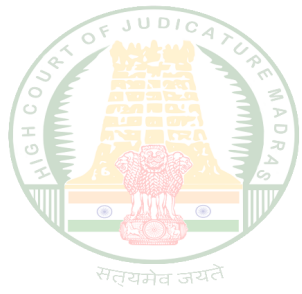
taking treatment as inpatient in Loh Guan Lye Specialists Centre, Malaysia.

The medical certificate and photograph of her son taking treatment produced, but not seriously disputed. It is to be noted that there is Extradition Treaty between the Government of the Republic of India and the Government of Malaysia.

13.In view of the same, this Court is inclined to grant return of Malaysian passport to the 2<sup>nd</sup> petitioner alone. Accordingly, the learned Chief Judicial Magistrate, Coimbatore is directed to return the Malaysian Passport bearing No.A55506479 to the 2<sup>nd</sup> petitioner enabling her to visit Malaysia, meet her children, more particularly, her son who is under treatment, with the following conditions.

(i)The 2<sup>nd</sup> petitioner to file affidavit before the trial Court furnishing details of her address in Malaysia, contact details viz., mobile number and Email ID.

(ii)The 2<sup>nd</sup> petitioner to file affidavit undertaking that the trial can proceed in her absence; she will be represented by her counsel; she will not dispute her identity; she will appear before the trial Court as and when directed to do so and she will not be any reason for the delay in trial.



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(iii)The 2<sup>nd</sup> petitioner to appear before the trial Court at the stage of framing of charges, questioning under Section 313 Cr.P.C., and on the date of judgment.

14.The learned Chief Judicial Magistrate, Coimbatore is directed to inform the Immigration Authorities through the respondent that the 2<sup>nd</sup> petitioner is permitted to travel Malaysia.

15.In the result, the impugned order, dated 22.09.2023 in Crl.M.P.No.22691 of 2023 in C.C.No.1698 of 2022 passed by the learned Chief Judicial Magistrate, Coimbatore is set aside in so far as the 2<sup>nd</sup> petitioner is concerned. As regards the 1<sup>st</sup> petitioner is concerned, the impugned order, dated 22.09.2023 in Crl.M.P.No.22691 of 2023 in C.C.No.1698 of 2022 is confirmed. Accordingly, this criminal revision case stands allowed in part.

04.06.2024

Neutral Citation: Yes/No  
Speaking Order/Non Speaking Order  
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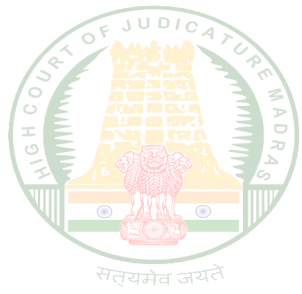
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- To
- 1.The Chief Judicial Magistrate,  
Coimbatore.
  - 2.The Assistant Commissioner of Customs,  
Customs Preventive Unit,  
Coimbatore.
  - 3.The Public Prosecutor,  
High Court, Madras.

M.NIRMAL KUMAR, J.

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PRE-DELIVERY ORDER IN  
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