

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM

BAIL APPL. NO OF YEAR 2020

O.R No. 7 of 2020 in Customs Preventive Commissionerate, Head
Quarters, Cochin

PETITIONER/ACCUSED

1. SWAPNA PRABA SURESH



VS

RESPONDENT/DEFACTO COMPLAINANT

CUSTOMS PREVENTIVE COMMISSIONERATE,

HEAD QUARTERS, COCHIN

THROUGH THE CENTRAL GOVERNMENT COUNSEL,

HIGH COURT OF KERALA, ERNAKULAM – 682 031

SYNOPSIS

Petitioner is a lady, working with Consulate General Office of United Arab Emirates (UAE) from 2016-19. Thereafter, the Petitioner was worked with the Consulate "Work on Request Basis" and obeyed the direction of His Excellency Consulate General of UAE. Since the Consulate General of UAE and his staff are entitled for the protection and immunity as a Diplomatic Agent as per the provisions of the Vienna Convention on Diplomatic Relation, 1961. As per the above Vienna Convention and Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957 for collecting a diplomatic cargo, the Airway Bill along with the Diplomat Signed letter is to be forwarded to the Cargo Agent and on the basis of the authorization given the by the diplomat, the cargo agent will collect the consignment and unloaded the same into the Consulate vehicle. The Petitioner has no chance to visit the customs office as well as the Cargo complex in the Airport.

Mr. Rashid Khamis Al Sheimeili, who is the present acting charge of the Consulate General of UAE directed the Petitioner to check with Customs regarding the delay of his Consignment reached in the Cargo on 30/06/2020. Again on 01/07/2020 as a Secretary under work on Request Basis, the Consulate General instructed her to contact the Customs officer, Cargo complex, Thiruvananthapuram and as a part of discharging the official duties the Petitioner called the Assistant Commissioner of Customs and verified the status of Diplomatic Cargo. Thereafter on 01/07/2020 at about evening, the Consulate General of UAE has received an Email in the office of the Assistant Commissioner Customs, Air Cargo Complex, Thiruvananthapuram requesting the presence of His Excellency for the verification of the Diplomatic Cargo at 11 am on 03/07/2020. Thereafter the Consulate General of UAE went the Cargo Complex and verified the Cargo and admitted before the Customs authority that the said Cargo belongs to him.

Thereafter the petitioner was also directed to prepare a letter seeking for the re-export of the Cargo addressed to the Assistant Commissioner of Customs, Cargo Complex, and Thiruvananthapuram. On the basis of the said admission he was again called for by issuing another notice to open the cargo with a request to appear on 05/07/2020. On the said date, one of the Senior Official from the office of the High Commissioner of Delhi along with the Consulate General appeared and the Diplomatic Cargo was opened and 30 kilograms of Gold was also found in the said cargo in a concealed manner. Since the Office of Consulate General of UAE claimed only the food items in the cargo and upon seizure of gold, a raid was conducted at the residence of the Public Relation Officer Mr. Sanith and Customs Officers have taken custody of the said person on 05/07/2020. The Petitioner has only contacted the Assistance Commissioner of Customs through Phone as per the instruction from Consulate General as a part of her Official work. But now the Petitioner realized that the media is spreading numerous false stories alleging the involvement of the Petitioner in the smuggling activity. The Petitioner has no connection and no involvement with respect to the smuggled gold. The Petitioner has actually falsely implicated in the above Customs case and from the media news as well as the report from the local daily, the petitioner really apprehends that there is every chance to implicate her as an accused in the gold smuggling case. It is further submitted that the media trial now going on against her and her family and further the media people and online platform channels are exhibiting her photographs is a clear violation of the principles laid down in the decision reported by the Honorable Supreme Court of India in **2009 (1) SCC (40)**. Thus the petitioner is alleged to have committed the offences under Section 104 (6) (c), and 135 of the Customs Act 1962. Since non bailable offence is alleged, the petitioner reasonable apprehends arrest and detention in connection with the above case. Hence the petitioner has filed this bail application seeking for pre-arrest bail.

List of date and events

2016-19 United Arab	The petitioner was working with Consulate General Office of Emirates (UAE) from.
3.09.2019 the Consul	Certificate issued by the his Excellency Jamal Husein Al Zaabi, General, Consulate General of UAE in favour of the Petitioner.
16/06/2020 June 2020	Email communication send by the Petitioner dated 16 th addressed to the Managing Director, Cochin International Airport under the instructions of Consulate General Of UAE
30/06/2020. RashidKhamisAl	Consignment reached in the Airport in the name of Mr. Shelmeill, who is the present acting charge of the Consulate General of UAE.
01/07/2020 Secretary under	The Consulate General instructed the petitioner as a 'work on Request Basis' to contact the Customs

officer, Cargo complex,
the official duties
Customs and
01/07/2020
the office of the
Excellency for the
03/07/2020
03/07/2020
for the verification
05/07/2020
and
KhamisAl Sheimeili,
05/07/2020
Relation Officer
the said person.

Thiruvananthapuram and as a part of discharging
the Petitioner called the Assistant Commissioner of
verified the status of Diplomatic Cargo.
The Consul General of UAE has received an Email in
Assistant Commissioner Customs, Air Cargo Complex,
Thiruvananthapuram requesting the presence of His
verification of the Diplomatic Cargo at 11 am on
Assistant Commissioner Customs, Air Cargo
Complex, Thiruvananthapuram
requesting the presence of the Consul General of UAE
of the Diplomatic Cargo.
Assistant Commissioner of Customs, Cargo Complex,
Thiruvananthapuram issued another notice to Mr. Rashid
Consul General to open the cargo with a request to appear
Aa raid was conducted at the residence of the Public
Mr. Sanith and Customs Officers have taken custody of

Provisions of law involved

Section 104 (6) (c), and 135 of the Customs Act 1962
Diplomatic Relations (Vienna Convention Act) 1972
The Vienna Convention on Diplomatic Relation, 1961.

The Vienna Convention and Foreign Privileged Persons (Regulation of Customs Privileges)

Rules, 1957

Points to be urged

The petitioner is innocent of the allegations leveled against her and she has not committed any offences as alleged. Prima facie no case is made out against the petitioner and the petitioner is falsely implicated in the case. The Consul General instructed the petitioner as a Secretary under 'work on Request Basis' to contact the Customs Officer, Cargo Complex, Thiruvananthapuram and as a part of discharging the official duties the Petitioner telephoned the Assistant Commissioner of Customs, Thiruvananthapuram and verified the status of Diplomatic Cargo. Since the Office of Consulate General of UAE claimed only the food items in the cargo and upon seizure of gold, the authorities falsely implicated petitioner as a prime accused wherein she acted only according to the instructions of Mr. Rashid Khamis Al Sheimeili, the present acting charge of the Consulate General of UAE .

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM

Bail Appl. No Of Year 2020

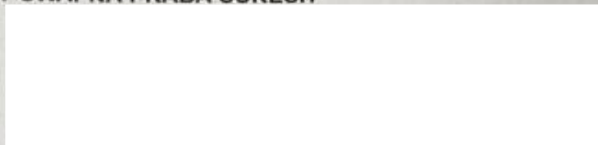
In

O.R NO. 7 OF 2020 IN CUSTOMS PREVENTIVE COMMISSIONERATE,

HEAD QUARTERS, COCHIN

PETITIONER/ACCUSED

1. SWAPNA PRABA SURESH



VS

RESPONDENT

1. CUSTOMS PREVENTIVE COMMISSIONERATE,

HEAD QUARTERS, COCHIN

THROUGH THE CENTRAL GOVERNMENT COUNSEL,

HIGH COURT OF KERALA, ERNAKULAM – 682 031

APPLICATION FOR ANTICIPATORY BAIL FILED UNDER SECTION 438 OF

THE CODE OF CRIMINAL PROCEDURE

ADDRESS FOR SERVICE OF THE PETITIONER IS THAT OF HER COUNSEL M/S NEWTONS LAW LLP KOCHI, RAJESH KUMAR T.K., BINDU T.N., APARNA SOMARAJAN, MINI .K, MERSEENA VINCENT, & HARIKRISHNAN R., ADVOCATES, 551, KHCAA CHAMBERS, HIGH COURT OF KERALA, ERNAKULAM – 31, AND THAT OF THE RESPONDENT IS AS SHOWN ABOVE.

BAIL APPLICATION FILED UNDER SECTION 438 OF THE CODE OF CRIMINAL PROCEDURE

STATEMENT OF FACTS

STATEMENT OF FACTS

The Petitioner begs to state as follows:

1. Petitioner is a lady, working with Consulate General Office of United Arab Emirates (UAE) as the Executive Secretary from 2016 onwards .During her tenure; she has successfully completed many major assignments as per the Instruction of the Consul General of the United Arab Emirates. Subsequently she was resigned from her post as the Secretary in September 2019 and joined as a contract staff in Price Waterhouse Coopers Ltd (PWC). The PWC

is basically dealt with the Space Park Project under the IT department, Government of Kerala.

2. The Matter being so, the Consul General of UAE Thiruvananthapuram again sought her assistance in various administrative matters as she was having experience in Consulate works. Due to the sudden outbreak of COVID 19 in India, the present Consulate General had flew back to UAE in the month of April 2020. Accordingly, Mr. Rashid Khamis Al Sheimeilli was appointed as acting charge of the Consulate General and he became the admin attached to the Office of the Consulate General of UAE in Thiruvananthapuram, Kerala. During all these times Petitioner was worked with the Consulate "Work on Request Basis" and obeyed the direction of His Excellency Consulate General of UAE. In order show the bonafide of the petitioner, the petitioner is producing some of the email communication prepared and sent as per the instructions of Consulate of UAE. The Email communications prepared and send on account of some educative programs against the spreading of COVID 19 through the Petitioner is produced herewith Annexure A-1. Another Email communication send by the Petitioner dated 16th June 2020 addressed to the Managing Director, Cochin International Airport under the instructions of Consulate General Of UAE is produced here with as Annexure A-2.
3. Since the Consulate General of UAE and his staff are entitled for the protection and immunity as a Diplomatic Agent as per the provisions of the Vienna Convention on Diplomatic Relation, 1961. As per the above Vienna Convention and Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957 for collecting a diplomatic cargo, the Airway Bill along with the Diplomat Signed letter is to be forwarded to the Cargo Agent and on the basis of the authorization given the by the diplomat, the cargo agent will collect the consignment and unloaded the same into the Consulate vehicle. Normally it is the duty of the Public Relation Officer (PRO) to collect and deal with the clerical works of the Customs clearance department. The Petitioner has no chance to visit the customs office as well as the Cargo complex in the Airport. A true copy of the Diplomatic Relations (Vienna Convention Act) 1972 is produced herein as Annexure A-3.
4. The True facts stated here above, Mr. Rashid Khamis Al Sheimeilli, who is the present acting charge of the Consulate General of UAE directed the Petitioner to check with Customs regarding the delay of his Consignment reached in the Cargo on 30/06/2020. Again on 01/07/2020 as a Secretary under work on Request Basis, the Consulate General instructed her to contact the Customs officer, Cargo complex, Thiruvananthapuram and as a part of discharging the official duties the Petitioner called the Assistant Commissioner of Customs and verified the status of Diplomatic Cargo. Thereafter on 01/07/2020 at about evening, the Consul General of UAE has received an Email in the office of the Assistant Commissioner Customs, Air Cargo Complex, Thiruvananthapuram requesting the presence of His Excellency for the verification of the Diplomatic Cargo at 11 am on 03/07/2020. Thereafter the Consul General of UAE went the Cargo Complex and verified the Cargo and admitted before the Customs authority that the said Cargo belongs to him.
55. Thereafter the petitioner was also directed to prepare a letter seeking for the re-export of the Cargo addressed to the Assistant Commissioner of Customs, Cargo Complex, and Thiruvananthapuram. The above said email communication as well as the letter prepared and sent by the petitioner at the instance of the Consulate General of UAE dated 03/07/2020 and the same was prepared by the petitioner and send to the Email address of the Consul Of UAE at its Email address <rashed.alshemeilli@mofaic.gov.ae> is produced herein as Annexure A-4. On the basis of the said admission he was again called for by issuing another notice to open the cargo with a request to appear on 05/07/2020. On the said date, one of the Senior Official from the office of

the High Commissioner of Delhi along with the Consul General appeared and the Diplomatic Cargo was opened and 30 kilograms of Gold was also found in the said cargo in a concealed manner. Since the Office of Consulate General of UAE claimed only the food items in the cargo and upon seizure of gold, a raid was conducted at the residence of the Public relation Officer Mr. Sanith and Customs Officers have taken custody of the said person on 05/07/2020.

66. The Petitioner has only contacted the Assistance Commissioner of Customs through Phone as per the instruction from Consulate General as a part of her Official work. But now the Petitioner realized that the media is spreading numerous false stories alleging the involvement of the Petitioner in the smuggling activity. Moreover the different channels are spreading various allegations against the petitioner connecting with the Office of Chief Minister of Kerala. In fact the Petitioner was worked in a Private Company named "Price Waterhouse Coopers Ltd (PWC)" for their Space Park Project under the IT Department, Government of Kerala after resigning from the UAE Consulate. Now the medias are diverting the original news and to sensationalize the same to meet their vested interest.1. When the petitioner resigned from the post of the secretary from the office of the Consulate General of UAE, his Excellency Jamal Husein Al Zaabi, the Counsul General, Consulate General of UAE has accepted her resignation and issued a certificate recognizing her commemerable service in his Office, apprising her that she was recognized as the best employee of 50 member office of the Consulate and also narrating her coordination for giving proper care to the high level officials as well as the Tourist , Patients from UAE. One of the major highlight of the petitioner of her tenure was her handling of the visit of the Ruler of Sharjah and other Royal Delegations during their visit to Kerala, which was also mentioned by his Excellency in his letter issued in favour of the petitioner dated 03.09.2019. A true copy of the Letter dated 03.09.2019 issued by his Excellency Jamal Husein Al Zaabi, the Counsul General, Consulate General of UAE is produced herein as Annexure A-5. More his Excellency Jamal Husein Al Zaabi, the Counsul General, Consulate General of UAE is also issue a Certificate of Appreciation to the petitioner appreciating her commitment and excellent service to the Consulate General of UAE. A true copy of Certificate of Appreciation issued by his Excellency Jamal Husein Al Zaabi, the Counsul General, Consulate General of UAE in favour of the petitioner is produced herein as Annexure A-6.
- 77The Petitioner has no connection and no involvement with respect to the smuggled gold. The Petitioner has actually falsely implicated in the above Customs case and from the media news as well as the report from the local daily, the petitioner really apprehends that there is every chance to implicate her as an accused in the gold smuggling case. The Petitioner is living with her family consisting of her Husband and two children, the younger son who is studying in 3rd standard and the elder daughter who is studying for the second year degree course. The Petitioner belongs to a respectable family and has no criminal antecedents. Moreover the accused is lady who undertakes before this Hon'ble Court that she has no intention to flee from justice. It is further submitted that the media trial now going on against her and her family and further the media people and online platform channels are exhibiting her photographs is a clear violation of the principles laid down in the decision reported by the Honorable Supreme Court of India in 2009 (1) SCC (40).
- 88.The petitioner is implicated as accused for the offences alleged under Section 104 (6) (c), and 135 of the Customs Act 1962. The petitioner has not committed any offences as alleged. The petitioner is innocent of the allegations leveled against her. Since cognizable and non-bailable offences are alleged against the petitioner, she reasonably apprehends arrest and detention by the Customs Department.

Hence being left with no other efficacious and alternative remedy of a speedy nature, the petitioner approaches this Hon'ble Court by preferring this Bail Application under Section 438 of the Code of Criminal Procedure on the following amongst other:

GROUNDS

1. The petitioner is totally innocent of the allegations leveled against her and has not committed any criminal offences as alleged. Prima facie the ingredients of the offences under Section 104 (6) (c), and 135 of the Customs Act 1962 are not made out in the allegations against the petitioner.
2. The petitioner has got nothing to disclose to the investigating officer and the investigating officer has nothing to be elicited from the petitioner. Hence the custodial interrogation of the petitioner in connection with the said incident is unnecessary.
3. The Petitioner has no chance to visit the customs office as well as the Cargo Complex in the Airport.
4. Mr. Rashid Khamis Al Sheimeili, who is the present acting charge of the Consulate General of UAE directed the Petitioner to check with Customs regarding the delay of his Consignment reached in the Cargo on 30/06/2020. Again on 01/07/2020 as a Secretary under work on Request Basis, the Consul General instructed her to contact the Customs officer, Cargo complex, Thiruvananthapuram and as a part of discharging the official duties the Petitioner called the Assistant Commissioner of Customs and verified the status of Diplomatic Cargo.
5. The petitioner was only directed to prepare a letter by the Consulate General of UAE seeking for the re-export of the Cargo addressed to the Assistant Commissioner of Customs, Cargo Complex, and Thiruvananthapuram
6. The Petitioner has no connection and no involvement with respect to the smuggled gold. The Petitioner has actually falsely implicated in the above Customs case and from the media news as well as the report from the local daily, the petitioner really apprehends that there is every chance to implicate her as an accused in the gold smuggling case.
7. The Petitioner is living with her family consisting of her Husband and two children, the younger son who is studying in 3rd standard and the elder daughter who is studying for the second year degree course. The Petitioner belongs to a respectable family and has no criminal antecedents. Moreover the accused is lady who undertakes before this Hon'ble Court that she has no intention to flee from justice.
8. While accepting the resignation of the petitioner as Secretary Consulate General Office of United Arab Emirates (UAE), his Excellency Jamal Husein Al Zaabi, the Consul General, Consulate General of UAE has issued a certificate letter dated 03.09.2019 recognizing the commendable service of the petitioner in his Office, apprising her that she was recognized as the best employee of 50 member Office of the Consulate and also narrating her coordination for giving proper care to the high level officials as well as the Tourist, Patients from UAE. One of the major highlight of the petitioner of her tenure was her handling of the visit of the Ruler of Sharjah and other Royal Delegations during their visit to Kerala, which was also mentioned by his Excellency.
9. More over his Excellency Jamal Husein Al Zaabi, the

Counsel General, Consulate General of UAE is also issue a Certificate of Appreciation to the petitioner appreciating her commitment and excellent service to the Consulate General of UAE.

10. It is further submitted that the media trial now going on against her and her family and further the media people and online platform channels are exhibiting her photographs is a clear violation of the principles laid down in the decision reported by the Honorable Supreme Court of India in 2009 (1) SCC (40).
11. The petitioner is ready and willing to co-operate with the investigation, if any, that may conducted by the Customs Department in connection with the case.
12. The petitioner undertakes that she will not interfere with the administration of justice or tamper with any evidence or intimidate any witness. The petitioner has no previous criminal antecedents.
13. If the petitioner is arrested and detained in custody in connection with the said case, serious prejudice and hardships will be caused to the petitioner.
14. It is submitted that, solvent sureties are available for executing the bail bond, if the petitioner is granted bail by this Hon'ble Court. The petitioner also undertakes that she is ready and willing to comply with all conditions as may be imposed by this Hon'ble Court while granting bail to her. The petitioner also undertakes that she will not violate any of such conditions.
15. It is submitted that the petitioner has not filed any other bail application seeking for similar reliefs, before this Hon'ble Court or any other Court. The petitioner also undertakes that she will not prefer any other bail application seeking for similar relief before this Hon'ble Court or any other Court during the pendency of this bail application.

On these and other grounds to be urged at the time of hearing, it is most humbly prayed that this Hon'ble Court may be pleased to direct the Assistant Commissioner Of Custom, Air Cargo Wing, Thiruvananthapuram to release the petitioner on bail in the event of her arrest in connection with O.R No. 7 of the 2020 of Customs Preventive Commissionerate, Head Quarters, Cochin coming within the jurisdiction of the Additional Chief Judicial Magistrate Court (Economic Offences) Ernakulam in the interest of justice.

Dated this the 7th day of July 2020.

Rajesh

Kumar T.K.

Counsel for the Petitioner