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(1997) 05 DEL CK 0046

In the Delhi High Court

Case No : Criminal Appeal No. 1099 of 1997

Chandra Swami @ Nemi Chand Jain — APPELLANT

Vs

Directorate of Enforcement — RESPONDENT

Date of Decision : 12-05-1997

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 439

Citation : (1997) 70 DLT 622

Hon'ble Judges : J.K. Mehra, J

Bench : Single Bench

Advocate : Rajinder Singh, R.K. Anand, K.K. Manan and Madan Lokur, for the Appellant;

Judgement

J.K. Mehra, J.

(1) I have heard the parties.

(2) In this case following raids by Income Tax Authorities on the premises of the petitioner last year the Enforcement Directorate move in to investigate some alleged violations of Foreign Exchange Regulation Act which came to light through the records seized by the Income Tax Department. The investigations have been in progress since November, 1996 with a view to locate the violations of Foreign Exchange Regulation Act. The present arrest came following release on bail of the petitioner after his arrest and investigations including custodial interrogation carried out by the Cbi for the alleged violations of the provisions of Foreign Contributions Regulation Act. In this case Counsel for the Directorate for Enforcement had opposed the bail application on the plea that they have still to carry out the further investigations and the accused being an influential person if released on bail may interfere in or obstruct the investigations. For that reason he following his arrest on 3rd April, 1997 was remanded to judicial custody which had been extended by me from time-to-time till today. By this time the accused has been in detention for about 39 days. During this period according to the Counsel for the parties he has been interrogated only once when only two

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questions were asked i.e. (i) How do you know Nina Pillai ? (ii) How do you know Ajay Beraria of New York?

(3) Counsel for Enforcement Directorate states that certain discussions with the petitioners had preceded to these questions but no Minutes of such discussion were kept. Mr. Lokur states that the Directorate is in touch with Indian Embassy in Washington and the High Commissioner in London to ascertain certain further facts. At the same time he states that one of the officers was sent to London by the Enforcement Directorate to get the details information from Mr. Akbar Veerji regarding remittance of Rs. 45 lakhs but except for a telephonic conversation he was not able to talk to him and has returned without any other investigation. On further inquiry the answer was that Mr. Veerji has promised to give an appointment to the officer for the next date but on that day he kept his telephone off and the investigator did not take the trouble of paying a visit to him and quietly returned to India without any further effort to get in touch with him.

(4) Mr. Lokur states that looking to the circumstances of the case, they have registered considerable progress in their investigations both in India as well as outside India. If this is the pace of the investigation, it is likely to take inordinately long time to conclude it and I do not think much will be achieved by keeping the petitioner in continued detention any further.

(5) Moreover most of the details relating to the said payments have already been obtained by the Enforcement Directorate, from the records seized by Income Tax Department, information gathered from various parties including donors and otherwise, which are as follows :

1.Transfer of I Million Us $ from Hongkong to New York by the accused to Adnan Khashogi.

2.20 million Thai Bhats which is stated to be equal to Us $ 3.5 lakhs transferred to Mr. Somgchai Chawla from Thailand to Washington and New York i.e. US$2.5 lakh to Washington and Us $ I lakh to New York. This money was remitted to different persons at Washington and New York.

3.Another Rs. 12 lakhs received from Somgchai Chawla from Bangkok.

4.Rs. 45 lakhs remitted to the petitioner from Channel Islands via London through Akbar Veerji. (It was in connection with this remittance that the officer of the Directorate is alleged to have gone to London).

5.Rs. 7.61 lakhs received by the accused from Akbar Veerji.

6.Rs. 30 lakhs received by the petitioner from Abdul Ismail in London, remitted to India.

7.US $ 50,000 received by the accused from Singapore through Rakesh Saxena.

8.Rs. 78 lakhs received by the accused from one Rakesh Saxena who is not so

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far been contacted by the Enforcement Directorate for the purposes of investigations.

9.2.5 million Us $ alleged to have been paid by Late Rajan Pillai to the accused as per the allegations of his widow Ms. Nina Pillai.

10.US $ 25,000 remitted by late Rajan Pillai from Singapore to accused.

11.US$1.25 lakhs remitted by Rajan Pillai to the accused.

(6) It is stated by Mr. Lokur that they have not been able to contract Ms. Nina Pillai notwithstanding that she is very often available in the city.

(7) The information of payments at Serial Nos. 9 to 11 above has been collected by the Enforcement Directorate from the complaint instituted by Ms. Nina Pillai, widow of late Rajan Pillai against the accused which is already being tried by a Court of competent jurisdiction in Tis Hazari.

(8) In my opinion, the Investigating Agency has had all the time and opportunity since November, 1996 to investigate the matter and even thereafter I have been adjourning this case from time to time to discover today that no steps worth the name have been taken by the Enforcement Directorate in furtherance of their investigations. In 39 days of his detention the accused has been questioned only once and that too was confined to the aforesaid two questions. This clearly shows that they do not require him to be in custody for eliciting any information from him.

(9) Keeping in view the aforesaid facts of this case, there appears to be no case for further detention and I am not inclined to continue the detention any further. Let the accused be released on bail on his furnishing a personal bond in the sum of Rs. 10 lakhs with one surety of the like amount subject to the satisfaction of the ACMM/Duty Magistrate, Patiala House Courts, New Delhi. This will, however, be subject to the following conditions :

1.He will join investigation and make himself available for investigations as and when required by the Investigating Officer at this office.

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2.He will report to the Investigating Officer on the 1st working day of each month and on the 1st working day of the later half of the month i.e., on 15th or thereafter which is the next working day at 10.00 a.m.

3.The petitioner-accused shall not travel outside the NCT Delhi without prior permission of the Investigating Officer.

4.The Passport of the petitioner which is stated to be with Cbi shall continue to remain deposited with the said Agency and shall not be released to him except on an express order of Investigating Officer.

The petition is disposed of in the above terms. Dasti.

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