

(2011) 01 KAR CK 0115
In the Karnataka High Court
Case No : Criminal Petition No. 5792 of 2010

Darshan Churiwala and Others	Vs	APPELLANT
The Directorate of Revenue Intelligence		RESPONDENT

Date of Decision : 21-01-2011

Acts Referred:

Customs Act, 1962 — Section 104, 108, 132, 133, 135

Citation : (2011) 01 KAR CK 0115

Hon'ble Judges : V. Jagannathan, J

Bench : Single Bench

Advocate : Nanjunda Reddy, for M. Vinaya Keerthy, for the Appellant; Urval N. Ramanand, Central Govt. Spl. P.P., for the Respondent

Judgement

V. Jagannathan, J.—Heard learned senior counsel Shri Nanjunda Reddy for the Petitioners and learned Central Government Special Public Prosecutor Shri Urval N. Ramanand for the Respondent in respect of the petition filed seeking extension of anticipatory bail in favour of the Petitioners.

2. The submission of the learned senior counsel for the Petitioners is that, the trial court, at the first instance, granted anticipatory bail for a period of 20 days by imposing conditions and, after the said period got over, following the summons issued to the Petitioners pursuant to Section 108 of the Customs Act, 1962 ("the Act" for short), the Petitioners made an application for the anticipatory bail to be extended. But, the trial court, on the second occasion, rejected the application and, therefore, the Petitioners are before this Court.

3. The further submission of the learned senior counsel is that, as the Petitioners apprehend arrest by the Respondent in view of the power of arrest conferred on the customs officer u/s 104 of the Act, the Petitioners, therefore, are before this Court for grant of extension of anticipatory bail for a limited period.

4. The learned Counsel for the Respondent, on the other hand, submitted that, even as per Section 108 of the Act, the persons who are summoned to appear

before the authorities and to give evidence are not and cannot be treated as accused and, therefore, the question of grant of anticipatory bail does not arise. The above submission is also sought to be supported by relying on the Apex Court decisions reported in Union of India (UOI) Vs. Padam Narain Aggarwal etc., and Poolpandi Vs. Superintendent, Central Excise and others etc. etc., .

5. In the decision in the case of Poolpandi Vs. Superintendent, Central Excise and others etc. etc., it has been held that persons called for interrogation by the custom authorities under the Customs Act or FERA cannot be termed as accused.

6. As far as the power of arrest by the customs officer is concerned, in the case of Union of India (UOI) Vs. Padam Narain Aggarwal etc., , it has been held that the power of arrest can be exercised only in those cases where the customs officer has a reason to believe that the person has been guilty of an offence punishable under Sections 132, 133, 135, 135A or 136 of the Act.

7. By reading together of the aforesaid decisions, it can be said that, in the instant case, merely because the Petitioners have been summoned to give evidence as per Section 108 of the Act, it cannot be said that the Petitioners are the accused and, therefore, the question of the Petitioners being arrested on the ground that the customs officer has reason to believe that the Petitioners are guilty of the commission of any of the offence does not arise.

8. Under the above circumstances, the anticipatory bail application is not maintainable when there is no such apprehension of arrest and the persons summoned u/s 108 of the Act are not the accused.

9. With the above observations, this petition stands disposed of and if the Petitioners make out a case of they having an apprehension of being arrested, they are at liberty to move the court for anticipatory bail.