

(2009) 07 DEL CK 0458
In the Delhi High Court
Case No : Criminal M.C. 300 of 2009

Directorate of Revenue Intelligence

APPELLANT

Vs

Md. Jamil @ Wasim @ Bhura

RESPONDENT

Date of Decision : 15-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439(2)
Customs Act, 1962 — Section 108, 135

Citation : (2010) 6 RCR(Criminal) 2568

Hon'ble Judges : Mool Chand Garg, J

Bench : Single Bench

Advocate : Satish Aggarwala, for the Appellant; Sangita Bhayana, for the Respondent

Final Decision : Dismissed

Judgement

Mool Chand Garg, J.—This order shall dispose of the present petition filed on behalf of the petitioner (Directorate of Revenue Intelligence) seeking cancellation of bail granted to the respondent by the Court of Addl. Chief Metropolitan Magistrate, New Delhi vide order dated 18.12.2008 u/s 439(2) Cr.P.C.

2. It is the case of the petitioner that on 28.02.2006 the officers of the Directorate of Revenue Intelligence recovered and seized fake currency notes to the tune of Rs. 10 lakhs smuggled by One Liaqan from Pakistan which was to be handed over to one Shan Mohammad @ Shanu. During the course of investigation voluntary statements were tendered u/s 108 of the Customs Act by Mrs. Liaqan and Shan Mohammad @ Shanu who admitted the aforesaid recovery and seizure and other incriminating facts. Shan Mohd. @ Shanu further stated that he was working at the instance of Mohd. Jamil @ Wasim @ Bhure, the present respondent. The complaint u/s 135 of the Customs Act stands filed against Smt. Liaqan and Shan Mohd which is pending adjudication. The respondent had also been arrested in some other case and was taken into custody in connection with this case also on 16.08.2007 when he also made a

statement admitting his connection with the fake Indian currency notes to the value of Rs. 10 lakhs. As such, when it came to the notice of the petitioner that the respondents has also committed offences punishable u/s 135 of the Customs Act after his arrest in this case on 10.12.2007 he was remanded in judicial custody in the present case also. A complaint has been filed against the respondent u/s 135 of the Customs Act.

3. During the course of proceedings, the respondent filed a bail application before the concerned ACMM which has been decided by the ACMM vide orders dated 23.12.2008. The relevant portion of the order granting bail to the respondent is as follows:

Arguments on bail application heard. In nut shell the prosecution case against the accused is as follows.

One Liyakan and his associates were apprehended near IGI Airport. In the interrogation of the accused Shan Mohd. Arrested along with said Liyakan. Name of one Bhura occurred who was involved in the import of fake currency notes into India on 28.02.2006. Despite efforts of custom department Bhura could not be identified and arrested. Later on accused Jamil was arrested by the Special Cell Delhi Police in connection with the possession of the fake currency notes.

When the accused was in custody the interrogation was carried out by custom department also. In his statement u/s 108 Customs Act he stated that he had received fake currency notes of the value of rupees 60 Lacs. He also admitted sending of the Shan Mohd. To receive fake currency notes of Rs. 10 lacs from Liyakan on 28.02.2006.

He gave the number of some mobile phones used by him for contacting other accused persons.

I have considered the arguments on behalf of the parties. Accused has already been admitted to bail in the case registered against him on recovery of fake currency by Special Cell Delhi Police.

He is in custody in the present case since September 2007. Ld. Counsel for the complainant is unable to point out any application form for the purchase of the sim card/ mobile number allegedly used by the accused for contacting other accused persons bearing the photograph of the accused.

Co-accused Liyakan has already been released on bail, complaint has been already filed. Prosecution evidence is yet to complete. In the facts and circumstances accused is admitted to bail on furnishing a personal bond for an amount of Rs. 20,000/- with two sureties of the like amount. Accused failed to furnish the bail bond. Let he be produced on 03.01.2009 from custody.

4. It has been submitted on behalf of the petitioner that this bail order cannot be sustained keeping in view the serious allegations against the respondent regarding his connection with smuggling of fake currency of Rs. 10 lakhs in India

and the statement made by him u/s 108 of the Customs Act besides the evidence which has been collected by the petitioner in the case of DRI v. Liaqan and Ors. It has been submitted that in fact the Sessions Court had dismissed the bail application of Shan Mohd, the co-accused of the respondent vide order dated 02.12.2008 and in view of the aforesaid, the ACMM was not competent to have passed this order in favour of the respondent.

5. It has been submitted that while passing the impugned order the Trial Court has not taken into consideration that the respondent was involved in more than one case of fake Indian currency note and has also not considered the written reply filed to the bail application wherein the petitioner mentioned the role of respondent Mohd. Jamil as per the statement made by one Mohd. Sajid, who stated that it is Mohd. Jamil who gave a passport of Akila and Vakila as identity proof at the time of purchasing SIM Card No. 9891010537 and 9990598359 and that calls were made from that mobile which was being used by Bhura Alian Shan Mohd. It was submitted that there was ample evidence against the respondent for his involvement in this case which has been over-looked by the Trial Court such as his own statement dated 16.08.2007 tendered on 108 of the Customs Act as well as statement of other co-accused persons, besides the other corroborating evidence. It is submitted that possession of fake currency and assisting anyone to spread fake currency are serious matters and a Trial Court ought to have considered all the aforesaid facts while deciding the bail application of the present respondent. It is submitted that once the bail application of one of the co-accused was dismissed by the Sessions Court, the Trial Court i.e. ACMM concerned has no jurisdiction to grant the bail order to the respondent, as has been done in this case.

6. Respondent has opposed the present petition by filing a reply. According to the respondent, no ground has been made out for cancellation of bail granted to him u/s 439(2) Cr.P.C.

7. It has been further submitted that the bail can only be cancelled if there are factors like possibility of accused absconding from trial and the likelihood of threatening the witnesses which ought to have been taken into consideration by the Trial Court but no such thing has been pleaded either before the Trial Court or before this Court. Moreover, the respondent is already on bail in the other connected matter and has not abused the concession of bail. In fact, the application for cancellation of bail, if any to be moved, should have been moved before the Court of ACMM, which is not being done in the present case. It is also submitted that even otherwise except for the statement of respondent recorded u/s 108 of the Customs Act, which per se is not admissible in evidence unless and until corroborated by some other evidence, there is no other evidence against the respondent and as such even on merits the petitioners have no case for seeking cancellation of bail. It is also submitted that out of total of 23 witnesses, only 2 witnesses have been examined by the petitioner and it would take a long time to conclude the prosecution evidence, as the prosecution has

submitted a long list of 23 witnesses.

8. It is submitted that rejection of bail application of Shan Mohd was by the Trial Court which was the court of Addl. District and Sessions Judge which makes no difference to the case of the respondent inasmuch as the bail has been granted to the respondent by the concerned ACMM after taking into consideration the facts of the case. It is submitted that even otherwise the respondent was in judicial custody for a period of more than 15 months and the ACMM has already imposed a condition to secure his presence at the time of trial. It is further stated that the evidence which has been relied upon by the petitioner against the respondent needs corroboration inasmuch as nothing incriminating is find from the respondent and for that reason also, even on merits, the present petition filed by the petitioner cannot be allowed.

9. I have given my thoughtful consideration to the rival submissions. Merely because there is a serious offence against the respondent, it cannot be a ground for cancellation of bail which has been granted by the ACMM concerned after taking into consideration all the facts of the case as well as the release of one of the co-accused.

10. The respondent has been released on bail after he remained in custody for a period of 15 months. Cancellation of bail cannot be ordered on the merits of the case. No grounds which are required to have been established for the purpose of seeking cancellation of bail have been brought to my notice by the learned Counsel for the petitioner inasmuch as the circumstances when bail can be recalled, which could be summarised as follows:

- (1) Where the accused has misused the liberty granted to him.
- (2) Where accused has attempted to tamper with the evidence.
- (3) Where he has attempted to influence the witnesses.
- (4) Where there is a possibility of the accused to abscond and, therefore, there is a possibility that the accused may not be available for trial.

11. Reference in this regard can be made to the following judgments:

- 1) Sami Ullaha Vs. Superintendent, Narcotic Central Bureau,
- 2) Vimalben Ajitbhai Patel Vs. Vatslabeen Ashokbhai Patel and Others,
- 3) Aslam Babalal Desai Vs. State of Maharashtra,
- 4) Dinesh M.N. (S.P.) Vs. State of Gujarat,

12. None of the aforesaid conditions are in existence in this case. It is also not a case where the trial court has not applied its mind, while granting the bail. Reference can be made to a judgment delivered by the Apex Court in Rizwan Akbar Hussain Syed Vs. Mehmood Hussain and Another,

13. Accordingly, the petition filed by the petitioner is DISMISSED. It is, however, made clear that nothing stated in this order will cause any aspersions on the merits of the case before the trial court.