(2014) 09 DEL CK 0458

In the Delhi High Court

Case No : Bail Application No. 2088 of 2014

Inder Prakash Kohli APPELLANT

Vs

Directorate of Revenue Intelligence RESPONDENT

Date of Decision : 19-09-2014

Acts Referred:

Customs Act, 1962 — Section 104, 135, 135(1)(i)(A), 135(1)(i)(B)
Penal Code, 1860 (IPC) — Section 120B, 420, 468, 471

Citation : (2015) 1 JCC 383

Hon'ble Judges : Sudershan Kumar Misra, J

Bench : Single Bench

Advocate : Pradeep Jain, Ashish Batra and Prity Jain, Advocates for the Appellant; Satish Aggarwal, Advocates for the Respondent

Judgement

Sudershan Kumar Misra, J.—The present bail application has been moved by Mr. I.P. Kohli, who is one of the five accused in a case involving smuggling of gold. One of the co-accused, namely Mr. P.C. Gupta has been granted bail by this Court on 20.08.2014. It is the case of the applicant that, the Department of Revenue Investigation has assigned the same role to the applicant and the co-accused - P.C. Gupta, who has been enlarged on bail by this Court, and therefore the applicant should also be granted bail on the grounds of parity. Earlier, Mr. Kohli had moved Bail Application No. 3469/14 before the Special Judge (PC Act), which was dismissed on 12.09.2014.

2. In substance, it is alleged by the Directorate of Revenue Intelligence (DRI), i.e. respondent herein, that Mr. Kohli was engaged in organizing and financing smuggling of gold into India from other countries such as Dubai, Indonesia, Bangkok, Singapore.

3. On 20.06.2014, officials of DRI, Delhi Zone, intercepted one Sh. Vinod Khanna for having illegally brought 5 kgs of gold from Dubai. They also intercepted the receiver Mr. Hari Sharan Khanna, who is also his cousin. Mr. Hari Sharan Khanna is also stated to be the employee of the petitioner Inder Prakash Kohli. The said

receiver, Mr. Hari Sharan Khanna, also disclosed that even previously, gold had been smuggled into India on a number of occasions, including 2 kgs gold from Bangkok and 2.250 kgs from Indonesia. He further stated that he was aware of these operations and that he received some extra money apart from his usual salary to escort the carriers.

4. On being questioned, the petitioner is stated to have admitted that he had given instructions to the carrier to smuggle 5 kg. of gold into India. He further stated that, he was doing this work for monetary gain, and that the scope of his work was limited to making arrangements for the gold to be brought into India. And that one Mr. Anuj Kumar was responsible for booking the tickets. In addition, it was found that an account was being maintained with the ticketing agent by the petitioner in his own name, which showed that he had booked around 30 tickets, demonstrating an active operation controlled by the petitioner also. Interestingly, the last booking entry made was for the applicant for a flight to Dubai scheduled to depart at 11 a.m. after the other co-accused were apprehended at around 3 a.m. of the same day. It also came to light that on the same day, the applicant had also made a reservation at Hotel Centaur, located near the airport, for a few hours only. Counsel for the respondent, who appears on advance notice, contends that this clearly shows that after the applicant received information regarding the apprehension of the carrier and the receiver, he intended to flee the country.

5. The counsel for the petitioner has relied upon Anil Mahajan Vs. Commissioner of Customs and Another, , to contend that not only in the case of economic offences, but also in the case of other offences, the Court will have to consider the larger interest of the public or the State. Hence only the considerations which should normally weigh with the Court in the case of other non-bailable offences should apply in the case of economic offences also; and further that it cannot be said that bail should invariably be refused in cases involving serious economic offences.

6. The relevant facts in the instant case are different. In Anil Mahajan''s case (supra) the investigation had been completed; and the witnesses that were to be examined were mainly officials, and therefore, the chances of the witnesses being influenced or intimidated had the accused been granted bail were minimised. In the present case, even the investigation has not been completed. Further, the statement of one of the witness is in the process of being recorded, while one of the accused has failed to join the investigation. Furthermore, this Court in Anil Mahajan''s case (supra) also observed that the paramount considerations to be kept in mind while exercising discretion were; the likelihood of the accused fleeing from justice, and also the likelihood of the accused tampering with prosecution evidence. In this context, the fact that he had booked his ticket for Dubai; and had also made a reservation in a hotel located near the airport; almost immediately after he learnt that the co-accused had been apprehended; indicated, prima facie, that the petitioner had made all

arrangements to flee the country. Furthermore, since the statement of one witness is yet to be recorded, there is likelihood of that witness being influenced.

7. Counsel also relied on Sanjay Chandra Vs. CBI, , where the court observed that even in cases involving economic offences of a huge magnitude, the presence of the accused may not be necessary for further investigation once the investigating agency had completed its investigation and the chargesheet had been filed. As noted earlier, the investigation in the present matter has not been completed as the statement of one of the applicant''s associates has not been recorded completely. In addition to this, one accused person namely, Mr. Syed Zamil Hasan, has also failed to join the investigation. Keeping all this in mind, this case is of no assistance to the petitioner.

8. Counsel further relied on Mohammed Kunju and Another Vs. State of Karnataka, , to submit that a condition to surrender the passport of the accused could have been imposed on him. In the present case firstly, the petitioner is an Indian citizen, as opposed to Mohammed Kunju''s case (supra) where the accused person was a foreign national. Secondly, the applicant was intercepted at the time when he was trying to flee the country which clearly demonstrates his intent to evade all legal consequences and proceedings that may be instituted against him for the alleged offences. Therefore, to my mind, a mere condition of surrendering his passport will not be enough to secure his presence when required.

9. Counsel for the petitioner further submitted that as the co-accused has been granted bail by this Court, therefore, on the grounds of parity the applicant should also be granted bail. For this the counsel relied on Izharul Haq Abdul Hamid Shaikh and Another Vs. State of Gujarat, The facts and circumstances of Izharul Haq''s case (supra) are different from the case at hand. That case was related to the provisions of TADA where several appeals were taken up together. In one such appeal the accused were all labourers employed under another co-accused. The allegation against the labourers was that they were responsible for transporting certain containers from one vehicle to another. The accused had no knowledge of the contents of the containers. All accused labourers were granted bail, except one, who was later granted bail on the grounds of parity with respect to the other enlarged labourers. However, in the present case, the applicant is the mastermind behind the smuggling operation. The other co-accused - Mr. P.C. Gupta, who was granted bail, had financially contributed towards the smuggling operation, and was to receive 2 kg of gold from the 5 kg that was smuggled. On the other hand the applicant herein, was controlling all the operations from making arrangements for airline tickets, making reservations and payments, engaging carriers and receivers, and was also responsible for the transport of the carrier from the airport. The car used for this purpose was registered under the name of the applicant himself. As such the role of the applicant is much wider and quite different from that of the co-accused - Mr. P.C. Gupta.

10. Counsel for the petitioner also sought to urge that the offence alleged against

the applicant is a bailable offence under Section 104 of the Customs Act. Further, that since the total amount of duty evaded was less than Rs. 50 lakhs, therefore, the offence is bailable in terms of Section 135(1)(i)(B). On the contrary, it is the case of the respondent that their case is not one of evasion of duty, but rather that of import of prohibited goods under Section 135 of the Customs Act, which is not a bailable offence. Furthermore, as per Section 135(1)(i)(A) if the market price of the smuggled goods exceeds rupees one crore, then the person shall be imprisoned for a term which may extend to seven years. In the instant case, according to the valuation of the Jewellery Appraiser at the IGI Airport, the value of the gold was determined to be Rs. 1,24,22,475/- as per the tariff value under notification No. 46/2014-Customs (N.T.) dated 19.06.2014; while its market value was evaluated to be Rs. 1,36,55,000/-, it therefore follows that if the petitioner is convicted he may even be incarcerated for seven years.

11. The applicant has allegedly been smuggling gold on various occasions, and this was not the first time. It may also be noted that the applicant is also involved in another case of banking fraud in F.I.R. No. RC2202013 dated 28.09.2013 under sections 420, 468, 471 read with 120B of the I.P.C. The applicant''s antecedents are not clean.

12. The car bearing Registration No. DL-4C-AH-8319, which was used in the smuggling operation for bringing the carriers from the airport, is registered under the name of the applicant himself.

13. The applicant bore the expenses for the airline tickets and for boarding and lodging of the carriers.

14. The instructions with regard to the smuggling operation were given by the applicant himself to the carrier and the receiver.

15. Clearly, the petitioner is a major hub in the entire operation and is responsible for overseeing the operation in an ongoing manner.

16. The carrier had been apprehended at around 3 a.m. and the applicant booked himself on a flight to Dubai departing at 11 a.m. of the same day. Further, he also made a reservation at Hotel Centaur, which is located near the airport, for only a few hours. This goes to show that after he came to know that the carrier was apprehended at the airport, the applicant had made all preparations and the necessary arrangements to flee the country.

17. For all the reasons stated above, I am not inclined to grant the relief as prayed for in the petition. The petition is therefore dismissed.