(2005) 03 DEL CK 0105

In the Delhi High Court

Case No : Bail Application 1902 of 2004

Inderjeet Nagpal APPELLANT

Vs

Directorate of Revenue Intelligence (DRI) RESPONDENT

Date of Decision : 01-03-2005

Acts Referred:

Citation : (2005) CriLJ 2495 : (2005) 118 DLT 194 : (2005) 80 DRJ 569 : (2005) 99 ECC 569 : (2006) 193 ELT 408

Hon'ble Judges : B.N. Chaturvedi, J

Bench : Single Bench

Advocate : Mukul Rohtagi and R.K. Handoo, for the Appellant; Satish Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Chaturvedi, J.—In anticipation of his arrest on account of being involved in fraudulent evasion of customs duty to the tune of Rs. 4.64 crores by way of mis-declaration and under valuation in respect of import of MPEG cards in the names of four firms, namely, M/s. Shri Krishna Impex, M/s. Damodar Enterprises, M/s. Marcos Enterprises and M/s. Nav Durga Enterprises, the petitioner seeks grant of pre-arrest bail u/s 438 Cr.P.C.

2. The petitioner is running an office by the name of M/s. Everything International at his residential premises bearing No. C-163, Greater Kailash, Part-I, New Delhi, which was raided by the officials of the respondent Directorate of Revenue Intelligence(DRI), on 3rd of June, 2004 in connection with investigation in regard to import of MPEG cards by aforesaid firms by mis-declaring and under valuing the same as PCB. ON being so required, the petitioner appeared before the concerned DRI officials at 300 hrs on the same very day to join investigation when he allegedly made a voluntary statement u/s 108 of the Customs Act admitting that the aforesaid firms importing the MPEG cards by mis-declaring and under valuing the same as PCB were being controlled by him during the relevant period. He undertook to deposit the entire customs duty amounting to

Rs. 4, 64,42,823/-, which had been evaded, and submitted a demand draft for Rs. 24 lacs and postdated cheques for Rs. 1.29 crores towards part payment of the aforesaid evaded amount. He also deposited a demand draft for Rs. 8 lacs in the DRI Office at Delhi and Rs. 5 lacs in DRI Office at Bombay as part payment. It is added that on being shown the details of bills of entry and other evidence indicating his involvement in the evasion of customs duty, the petitioner acknowledged the details by giving a certificate on its each page as seen and agreed. Scrutiny of the statement of accounts obtained from bank in regard to the account maintained by the petitioner in the name of his firm M/s. Everything International revealed huge financial transactions between his firm and M/s. Shri Krishana Impex, Goa, over and above the value of PU leather imported.

3. According to the respondent the petitioner acted as mastermind behind the import of MPEG cards and the owners of the importing firms were simply getting commission of Rs. 10,000/- to Rs. 15,000/- per container, as admitted by Sanjay Chauhan, paper proprietor of the firms. It is claimed that the investigation reveals that the petitioner was concerned in procurement, transportation, receipt and sale of impugned goods in local market. One Shri Jawahar Roop Chand is stated to have confirmed in his statement dated 10.6.2004 that the petitioner had imported MPEG cards and sold the same in the local market through one Shahji and that it was the petitioner himself who had arranged the money to be given to foreign supplieRs.

4. In regard to his statement u/s 108 of the Customs Act, the plea on behalf of the petitioner is that he was actually forced to make that statement and that the same, subsequently, stands retracted by him. In regard to various payments alleged to have been made in part payment of the customs duty evaded, it is contended that the petitioner was compelled to make the same in order to save himself from being arrested and such payments, thus, could not be taken to amount to an acknowledgment on is part of his involvement in the commission of offence complained of.

5. This apart, it is submitted that the petitioner is a serious Cardiac patient having undergone a bye-pass surgery in 1997. He had also been a patient of Spinal Tuberculosis and in view of his precarious health condition, his arrest and detention would put his life in jeopardy without any useful purpose being served, particularly when he has been regularly joining investigation as and when so required.

6. The counter plea of the respondent on the other hand, is that the investigation into the matter is still underway and investigating agency should be allowed a freehand in the matter to collect all available evidence showing involvement of the petitioner in the commission of crime. It is complained that the petitioner has not been fully co-operative in investigation and has often evaded full participation citing medical ground. It is added that he has virtually been absconding as he is found to be staying at his office-cum-residence and, in the circumstances, does not deserve any protection.

7. Reliance was placed on decisions in Enforcement Officer, Ted, Bombay Vs. Bher Chand Tikaji Bora and Another, ; Dukhishyam Benepani, Assistant Director, Enforcement Directorate(FERA) v. Arun Kumar Bajoria, 1998 JCC 18; Directorate of Enforcement v. Ashok Kumar Jain, 1998 (1) JCC 1 ; State Vs. Jaspal Singh Gill, ; Ram Narain Popli v. CBI, 2003 1 AD SC 253; and many more, to oppose the petition. In addition, decision of this Court in Del Agha v. Directorate of Revenue Intelligence, 2002 (1) CCC 152; Sanjiv Kumar Gupta v. Commissioner of Customs, 2001 (1) JCC 146; Subhash Chanana v. State 1994 Cri.L.J. 2370; Rama Swaroop v. The State(Delhi Admn.) and Ors., 1986 Cri.L.J. 526; Wajinder Singh etc. v. State, 1979 RLR 381; and some other High Courts were also referred to in support of plea opposing the grant of petition.

8. Learned senior counsel, appearing for the petitioner, laid utmost emphasis on his contention that the offence punishable u/s 135(1)(ii) of the Customs Act, 1962, is a bailable one and Therefore the petitioner even otherwise deserves to be released. A Single Bench decision of Bombay High Court in Subhash Chaudhary v. Deepak Jyala and Ors. in CRL.W.P.1384/2004, was referred to in this connection.

9. On the contrary, a decision of this Court in Mohan Lal Thapar v. Y.P.Dabara, Inspector, Customs, New Customs house, New Delhi, 2002 (1) JCC 460, is cited on behalf of the respondent to contend that an offence punishable u/s 135(1)(ii) of the Customs Act, 1962 is a non-bailable one. It was contended that the present petition for anticipatory bail could not be used as a basis for obtaining a declaration to the effect that the offence in question is a bailable one and if the petitioner really felt that way, the very maintainability of the present petition would be rendered questionable.

10. Table II of the First Schedule to the Code of Criminal Procedure, 1973 incorporates Classification Of Offences Against - other laws. It reads thus:

II - CLASSIFICATION OF OFFENCES AGANST - OTHER LAWS

Offence

Cognizable or non-cognizable

Bailable or non-bailable

By what court triable

1

2

3

4

If punishable with death, imprisonment for life, or imprisonment for more than 7 yeaRs.

If punishable with imprisonment for 3 years, and upwards but not more than 7yeaRs.

If punishable with imprisonment for less than 3 years or with fine only.

Cognizable

Ditto

Non-cognizable

Non-bailable

Ditto

Bailable

Court of Session

Magistrate of the first class.

Any Magistrate

11. The offence u/s 135(1)(ii) of the Customs Act is punishable with imprisonment extending to three years or with fine or with both. Learned senior counsel for the petitioner sought to maintain that the offence punishable u/s 135(1)(ii) would fall under Entry 3 of Table II and borrows support to his contention in this regard from the aforesaid decision of the Bombay High Court in Subhash Chaudhary (supra). Having gone through the decision in Subhash Chaudhary (supra), it is difficult to subscribe to the view taken therein as the same would appear to suffer from inherent contradictions. The offence punishable u/s 135(1)(ii) providing for punishment extending to three years clearly indicates that the same is punishable with imprisonment for a period up to 3 yeaRs. In that view of the matter, the same cannot be pleaded to fall under Third Entry of Table II. In Mohan Lal Thapar(supra), the plea if an offence u/s 135(1)(ii) is a bailable one was examined by this Court and answered in negative. I find no reason to take a different view.

12. Adverting to the other ground, I am afraid, ill-health offers no license for indulging in criminal activities of the nature complained of, with impunity. The efficacy of such a plea was taken note of by the Supreme Court in Directorate of Enforcement v. Ashok Kumar Jain(supra), and dealt with in the following terms:

It is not unusual that persons involving themselves in economic offences, particularly those living in affluent circumstances, are afflicted by conditions of cardiac instability. So the authorities dealing with such persons must adopt adequate measures to prevent deterioration of their health during the period of custodial internment. Court would interfere when such authorities fail to adopt necessary measures. But we are not in favor of stipulating in advance modalities to be followed by the authorities for that purpose. According to us such anticipatory stipulations are interference with the efficient exercise of statutory functions when dealing with economic offences. Hence, learned single judge ought not have imposed such conditions on the Directorate.

13. In yet another case, The State(through Deputy Commr. of Police, Special Branch), Delhi v. Jaspal Singh Gill(supra), a similar view was taken. Clearly, the petitioner would deserve no concession on the ground of ill-health. The incriminating evidence brought out in the course of hearing, prima facie, reflects the complicity of the petitioner in the commission of crime complained of. The investigation is still underway and the allegations against the petitioner of not fully cooperating in investigation cannot be lost sight of. In Dukhishyam Benepani, Assistant Director, Enforcement Directorate(FERA) v. Arun Kumar Bajoria (supra), the Supreme Court observed that a blanket order fully insulating a person from arrest would make his interrogation a mere ritual .

14. In the totality of facts and circumstances, the prayer for anticipatory bail is liable to be declined. The petition is, accordingly, dismissed. Interim order stands vacated.