(1998) 03 BOM CK 0042

In the Bombay High Court

Case No : Anticipatory Bail Application Stamp No. 889 of 1998

Shri Rajinder Kumar Sharma APPELLANT

Vs

Directorate of Revenue Intelligence and another RESPONDENT

Date of Decision : 31-03-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438
Customs Act, 1962 — Section 108

Citation : (1998) BomCR(Cri) 791 : (1998) CriLJ 3734

Hon'ble Judges : S.S. Nijjar, J

Bench : Single Bench

Advocate : J.C. Satpute, for the Appellant; S.D. Deshmukh, Assistant Public Prosecutor, for the Respondent

Judgement

S.S. Nijjar, J.—This is an application for anticipatory bail. It is stated that the applicant is the resident of New Delhi. He carries on business of gems and precious stones in the name and style of M/s. Chandra Gems for the last 10 years. He was approached by one Mr. Mahesh Ganatra, resident of Bombay, to start business of manufacturing plastic goods. The applicant was told by the said Ganatra that one Mr. Shantilal Jain of Bombay was interested in financing the manufacturing project. The applicant, therefore, got the licence to establish a small scale industry and obtained Certificate of Registration from the Department of Small Scale Industries, New Delhi. All these certificates obtained are not known to the applicant. According to the applicant, it was explained to the applicant by Mr. Ganatra that Shantilal Jain has good relations with some officers of the licencing authority. He was also assured that he will get the necessary import licence. The export was also to be done by Shantilal Jain. He again says without giving any reason that various amounts of money were deposited in the account of the applicant by Mr. Ganatra. In fact, it was Mr. Ganatra who was operating the account by depositing and withdrawing money from the said account. All this was done in the name of Varsha Poly Products Pvt. Ltd. having its administrative office in Bombay. The applicant was merely given certain invoices. He never received any goods. He also does not have access to or control over any godown or factory. Thus, he submits that he never manufactured any goods. Therefore, the question of importing/exporting any goods also did not arise. In November 1997, Shantilal Jain went to Delhi in the third week. He assured the applicant that all payments of customs duty will be made. Surprisingly, however, on 7th January, 1998, the D.R.I., New Delhi, recovered 300 documents from the applicant, which were of incriminating nature. Shantilal Jain filed an anticipatory bail Application No. 29 of 1998 in Bombay. He was granted anticipatory bail and it was observed that custodial interrogation is not necessary.

2. On the direction of the Court, the learned Counsel appearing for the D.R.I. has produced before this Court the operative part of the order passed in the case of Shantilal Jain. The operative part of the order is as follows :

"The applicant to be released on bail in the sum of Rs. 3 lakhs with one surety in like amount. In the alternative, Sessions Dept. to accept the sum of Rs. 3 lakhs in cash by Monday, 2-2-1998. Applicant to continue on the earlier bail till Monday, 2-2-1998. Applicant to attend the Office of the Customs on Monday, 2-2-1998 at 11 a.m. and thereafter as and when required by the customs in writing. Application stands disposed off."

3. From perusal of the above, it appears that the present applicant can derive no benefit from the same. On 19th March, 1998, this matter was adjourned to 23rd March, 1998 on the request of the Counsel for the applicant. Again on that day the matter was adjourned to 30th March, 1998. Again none appeared for the applicant on 30th March, 1998 and the matter was kept for today. Now again, none appears on behalf of the applicant. It is submitted by the Counsel for the D.R.I. that the application of the present applicant for anticipatory bail has been rejected by the Sessions Court. A copy of the order is not available either with the applicant or with the respondents. In any event, this Court has examined the matter in detail in view of the fact that the Counsel for the applicant is not present.

4. The Counsel for the D.R.I. submits that on a number of occasions notices have been sent to the applicant to be present in the office of the D.R.I. for the purpose of recording his statement u/s 108 of the Customs Act. The applicant has not cared to respond to any of these notices. He was also absent when the matter was heard before the Sessions Court. Apart from this, even if all the submissions made in the application are accepted, it would still be difficult for the applicant to explain as to how the officers of the D.R.I. recovered 300 incriminating documents from his control. Where examining a similar matter, the Supreme Court recently in the case of Directorate of Enforcement Vs. Ashok Kumar Jain, has held that in the cases of economic offences, anticipatory bail should not be granted as a matter of right. In that case, the applicant Ashok Jain was wanted in a number of offences under Foreign Exchange Regulation Act, 1973. He made an application before the Sessions Court at New Delhi. The application for

anticipatory bail was rejected. The learned Sessions Judge, whilst recording his reasons for rejecting the anticipatory bail stated that economic offences affect the whole nation. The observations made by the learned Sessions Judge are extracted in paragraph 3 of the judgement of the Supreme Court, thus :

"Anticipatory bail definitely hamper the proper and effective investigation. Therefore, extra care and caution has to be taken while dealing with the application for grant of pre-arrest bail. The demand of an individual''s liberty has to be matched with the larger interest of the public and the State. For instance, in the instant case, there are allegations of clandestine siphoning of big amount of precious foreign exchange. Such an offence is against the whole nation. The investigators have to be given full freedom for investigation. The allegations against the petitioner being of very grave and serious nature, the grant of anticipatory bail to this accused will certainly hamper proper investigation. The need for providing medical care and attention to the petitioner, in view of his past medical history, will be taken care of by the department even by the jail authorities in the event of his arrest. Such assurances have been given by the department."

Aggrieved against these observations, the applicant therein, moved the Delhi High Court. After examining the matter, the Delhi High Court also rejected the application for anticipatory bail. But whilst rejecting the application for anticipatory bail, the Delhi High Court observed that the arrest of the applicant shall be "subject to the opinion of the cardiologists of the All India Institute of Medical Sciences (AIIMS)". The Delhi High Court further observed that in case the Directorate considers custodial interrogation of the respondent necessary "it should approach the Director, AIIMS to constitute a Board of cardiologists to examine the respondent", and if the said Board reaches an opinion that custodial interrogation is not feasible "in that event it will be open to the officials to interrogate him under the care of the doctors at the AIIMS". Against this order, the D.R.I. had moved the Supreme Court. After examining the matter, the Supreme Court observed that the case put forward by Mr. Ashok Kumar Jain was not fit for grant of anticipatory bail. The Supreme Court then considered whether the High Court was wrong in imposing conditions on the Directorate regarding the manner in which interrogation of the respondent is to be modulated. In paragraph 8 the Supreme Court observed thus :--

"n8. We have noticed that learned Sessions Judge while dismissing the application for pre-arrest bail has taken due note of the aforesaid plea of the respondent and made necessary observations regarding the need to provide medical care and protection to the respondent in view of the medical reports. It cannot be contended, nor has it been contended before us, that respondent is immune from arrest or even interrogation simply on account of his physical conditions. No doubt investigating officials of the Directorate are duty bound to bear in mind that the respondent has put forth a case of delicate health conditions. They cannot overlook it and they have to safeguard his health while he is in their custody. But to say that interrogation should be subject to the opinion of the cardiologists of the AIIMS and that the officials of the Directorate should approach the Director of AIIMS to constitute a Board of cardiologists to examine the respondent etc. would, in our opinion, considerably impair the efficient functioning of the investigating authorities under FERA. The authorities should have been given freedom to chalk out such measures as are necessary to protect the health of the person who would be subjected to interrogatory process. They cannot be nailed to fixed modalities stipulated by the Court for conducting interrogations. 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 favour of stipulating in advance modalities to be followed by the authorities for that purpose. According to us such anticipatory stipulations are interferences 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."

In the present case, the learned A.P.P. submits that anticipatory bail has been granted to Shantilal Jain (the other accomplice) on his undertaking to pay a sum of Rs. 2 Crores by way of Customs Duty. Thus, it can be seen that the amounts involved are not small. The connection of the applicant with the commission of the offence cannot be ruled out at this stage. The applicant has not cared to join the investigation till date. No plausible reason is given in the application for not co-operating with the investigation. Therefore, it would not be proper to put fetters on the investigation which are to be conducted by the D.R.I.

5. In view of the above, I find no merit in the application for anticipatory bail. The same is hereby rejected.

Certified copy expedited.

6. Application rejected.

