(1989) 10 KL CK 0024

In the High Court Of Kerala

Case No : Criminal M.C. 986 of 1989

Syed Mohd., Asstt. Collr. of C. Ex. — APPELLANT

Vs

Abdulla Kalanad Mohd. — RESPONDENT

Date of Decision : 16-10-1989

Acts Referred:
Customs Act, 1962 — Section 135

Citation : (1989) 25 ECR 566 : (1990) 47 ELT 549

Hon'ble Judges : K.T. Thomas, J

Bench : Single Bench

Advocate : Additional Central Govt. Standing Council, for the Appellant; K. Ram Kumar, for the Respondent

Judgement

K.T. Thomas, J.—First Respondent was one among the 10 persons arrested by the Customs Authorities in connection with a crime alleging the offence u/s 135 of the Customs Act, 1962 (for short ''the Act''). The Additional Chief Judicial Magistrate (Economic Offences), Ernakulam granted bail to the first respondent by his order dated 5-10-1989. The said order is challenged by the Assistant Collector of Customs, Cochin in this petition. Though first respondent was allowed to be released on bail by the lower Court, he remains in custody since this court suspended the impugned order in the meantime.

2. The case in brief is the following:- On the basis of information that an Arab Dhow was arriving at Baypore Coast on 30-8-1989 with gold biscuits, the Directorate of Revenue Intelligence (Customs) sent officials to intercept the dhow. Those officials sailed in a coast guard ship to catch the crew and dhow along with the contraband gold. They sighted the Ara dhow off Baypore coast within Indian Customs Waters on 30-8-1989, but seeing the coast guard ship, the crew and dhow made an attempt to flee away. Though the attempt was foiled, the crew jettisoned 11 bundles of gold biscuits into the open sea before they were caught. On being interrogated, the customs officials understood that two of the accused are Indians and the remaining persons are Pakistani citizens.

They were formally arrested on 4-9-1989. An application for bail was earlier rejected by the lower Court on 26-9-1989. When a second application was filed later, learned magistrate was pleased to order release of the first respondent on his executing a bond for Rs. 1,00,000/- with two sureties for the like sum and also by depositing cash security of Rs. 39.000/- by each surety. First respondent was directed to appear before the Assistant Collector (Preventive customs), Cochin on every Monday and Thursday for four weeks.

3. The Additional Central Government Standing Counsel contended that the learned magistrate has not taken into consideration some of the broad aspects involved in this case. First is that the 11 bundles of gold biscuits jettisoned by the accused and his companions in the open sea could not be located yet and if one of the accused is released on bail now, it may be easy for him to give sufficient indications to other persons in the racket as to the spot where the contraband might be lying. Another ground urged is that first respondent is one among the gang involved in a well-planned scheme of flushing contraband gold biscuits from Dubai to India. The more important point raised is that first respondent has once jumped bail in an earlier case and even now he is under orders of arrest issued by the Chief Metropolitan Magistrate, Bombay. It is alleged that the first respondent was involved in a customs case in Bombay in 1974 and when he was released on bail, he jumped bail and left for Dubai and a "Red Alert Notice" issued by the Directorate of Revenue Intelligence, New Delhi for the arrest of the first respondent is pending from 1979 onwards. The gold biscuits thrown away by the first respondent and his associates are worth more than three crores of rupees, according to the assessment made by the Customs Department. It is also alleged that the accused persons including the first respondent are professional carriers having many contacts all over the country and abroad. In those circumstances, the lower court ought not have released the first respondent on bail, contends the Addl. Central Government Standing Counsel.

4. Shri K. Ramakumar, learned Counsel for the first respondent argued that the order passed by the lower court is not liable to be interfered with since the learned magistrate has considered all relevant points. He alleged that first respondent was subjected to third degree methods by the Customs Officials in order to extract a statement from him. He cited the decision of the Supreme Court in State of Maharashtra v. Nainmal Punjabi Shah, (1969) 3 SCC 904] in support of his contention that bail cannot be denied to a person indefinitely even if he is involved in economic offences.

5. The argument which impressed me most is the fact that the first respondent is likely to jump bail as he is alleged to have done earlier. I had the advantage of going through the statement recorded by the Superintendent of Customs House from the first respondent on 3-9-1989. True, the inculpatory portions contained in the statement have been disowned by the first respondent now who alleges that the same was extracted from him by adopting third degree methods. It is

too early a stage to conclude that the said statement is tainted by any such reasons. At any rate, I am not inclined to start with the presumption that the statement was extracted by practising third degree methods on him. It is found from the said statement that the first respondent was earlier involved in a customs case and when he was released on bail, he jumped bail and went to Doha. The ''Red Alert Notice'' issued by the Directorate of Revenue Intelligence for arresting the first respondent was not given due consideration by the learned magistrate for the simple reason that the defence hotly disputed the claim that the notice relates to the first respondent. According to the learned magistrate, even if the said notice actually pertains to the first respondent "nothing prevents the Customs Authorities from arresting him after his release on bail...". The said reasoning is ostensibly kept in view of the further allegation that the said notice was issued in respect of a person who jumped bail in 1974 and who has not surrendered to the court even till his arrest in connection with the present case. The other broad aspects such as the allegations that first respondent has connections with certain influential quarters in India and abroad cannot be lightly brushed aside. Learned Magistrate ought to have called for the file concerned and perused the same before deciding whether it is expedient to exercise the discretion in granting bail to the first respondent in the special nature of the allegations and circumstances involved.

6. Having considered various aspects involved, I am of the definite opinion that the time has not reached for releasing the first respondent on bail in this case. Accordingly, I quash the impugned order.

Crl. M.C. is disposed of accordingly.