

DRI v. Neeraj Varshney

21.12.2021

Present: Sh. Satish Aggarwala, Ld. Sr SPP along with Ms. Pooja Bhaskar,
Ld. Counsel for the Department.
Mr. R. P. Singh & Mr. Shivam Tyagi, Ld. Counsels for the applicant/
accused Neeraj Varshney .
SIO in person.

Reply filed by the department. Copy supplied.

Arguments heard.

On behalf of applicant/ accused, It is submitted that applicant/accused is in JC since 19.11.2021. Nothing incriminating was found by officers of the department from him. No notice was given by the department to the accused. No opportunity was afforded to explain his part. The act of the respondent department is contrary to the law settled by Hon'ble Supreme Court of India in the matter of Arnesh Kumar v. State of Bihar [2014, 8, SCC 273]. No proper provision of section 41 and 41A of Cr.P.C was followed by respondent department. The statement of the applicant/accused was recorded under section 108 of the Customs Act, 1962 under threat and coercion by officers of department during the course of investigation. Nothing has been recovered by department from the possession of applicant. The department has not stated / claimed single apprehension regarding flight risk, tampering evidence and influencing witnesses. Once the department has no any aforesaid apprehension, keeping the applicant in judicial custody is unwarranted. It is submitted that allegations made against applicant is completely wrong, incorrect and without any basis. It is submitted that applicant is law abiding citizen and running his old family business at Paharganj, New Delhi. The applicant has clean antecedents and never ever alleged with any criminal case in past. It is submitted that applicant/accused has deep roots in the society. It is submitted that applicant/accused has been wrongly arrested by the respondent department. It is submitted that applicant/accused is a family man and he has three children. It is submitted that applicant/accused may be admitted to bail.

On behalf of department, it is submitted that intelligence was developed by DRI, Delhi Zonal Unit, New Delhi that a syndicate comprising certain Chinese, Taiwanese and South Korean nationals, in association with some Indian nationals are indulging in smuggling of foreign origin gold into India through Air Cargo Complex, IGI Airport, New Delhi from Hong Kong using a couple of taxi IECs by way of concealment of gold inside

transformer of electroplating/ re-working machines, etc. It is submitted that consignment being imported by the said smuggling syndicate in the name of M/s Healthy Future Leaders Pvt. Ltd (IEC AAEH9111Q) vide House Airway Bill No. SZGF21113657 was likely to arrive at Import Shed, Delhi Cargo Service Centre IGI Airport, New Delhi on 18.01.2021. It is submitted that a team of DRI officers examined the goods imported vide House Airway Bill No. SZGF21113657 (Master Airway Bill No. 828-13986512) at Import Shed Delhi Cargo Service Centre IGI Airport, New Delhi on 18/19th November, 2021. The consignee was mentioned as M/s Healthy Future Leaders Pvt. Ltd (IEC AAEH9111Q) and the supplier was mentioned as M/s HK Flyoverseas Trading Co Ltd Unit 1105, HUA QIN International Building 340 Queen's Road, Central Hong Kong in respect of the said consignment whereas the goods were declared as Electroplating Machine. It is submitted that total 85.535 kg gold of foreign origin having total market value of Rs. 41,95,82,899/- has been recovered and seized.

It is submitted that accused might flee if granted bail. It is submitted that accused attempted to smuggle gold with his associates and he used to sell the same in the local market. It is submitted that the statement under section 108 of the Customs Act has been recorded which establishes his involvement in the offence. It is submitted that accused may tamper with the evidence and he might indulge in similar offence again. It is submitted that bail may be denied to the accused. Reliance is placed upon the judgment which are as follows :-

State of Bihar and Anr. v. Amit Kumar @ Bachcha Rai (2017) 13 SCC 751; Prahlad Singh Bhati v. NCT of Delhi & Anr. CrI. A. No. 324/2001; Umesh Verma v. State- Bail application No. 3500/2021; Malwinder Mohan Singh v. State of NCT of Delhi-W.P. (CrI.) 814/2020; K. I. Pavunny v. Assistant Collector, Central Excise-1997 (90) ELT 241 (SC).

In rebuttal, it is submitted on behalf of the accused that in view of judgment of Hon'ble Supreme Court of India in Cannon India case, DRI officials are not proper officers as per Custom Act. It is submitted that one of the co-accused is also released on bail as such accused may be considered for bail on parity basis. It is submitted that accused shall abide by all the conditions of the bail. Some judgments filed on behalf of accused which are as follows :-

Royal Impex v. Commissioner of Customs, Chennai 2006 SCC OnLine CESTAT 120 : (2007) 211 ELT 71; Kanumuri Raghurama Krishnam Raju v. State of Andhra Pradesh and others, 2021 SCC OnLine SC 421; Union of India v. Kisan Ratan Singh and others, 2020 SCC OnLine Bom 39 : (2020) 372 ELT 714.

Heard. Perused.

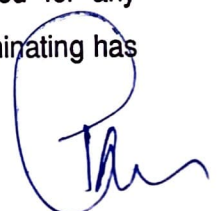
The grant of bail depends upon complex of facts and factors considered in the light of golden principles laid down from time to time by the higher Courts. In **Dipak Subhash Chandra Mehta Vs. CBI : (2012) 4 SCC 134** Hon'ble Apex Court held that *... "the Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail, a detailed examination of evidence and elaborate documentation of the merits of the case need not be undertaken, there is need to indicate in such orders reasons for prima facie concluding whey bail was being granted, particularly, where the accused is charged of having committed serious offence. The Court granting bail has to consider, among other circumstances, the factors such as:*

- a) The nature of accusation and severity of punishment in case of conviction and the nature of supporting evidence;*
- b) reasonable apprehension of tampering with the evidence or apprehension of threat to the complainant.*
- c) Prima facie satisfaction of the court in support with the charge.*

In addition to the same, the court while considering a petition for grant of bail in a non bailable offence apart from the seriousness of the offence, likelihood of the accused fleeing from the justice and tampering with the prosecution witness, have to be noted.

In **Anil Mahajan Vs. Commissioner of Customs: (2000) 84 DLT 854** it was held that *"there is no hard and fast rule and no inflexible principle governing the exercise of such discretion by the Courts. There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting of refusing bail. The answer to the question whether to grant bail or not depends upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be teated as a universal validity or as necessarily justifying the grant or refusal of bail....."*

In the given facts, accused is languishing in jail since 20.11.2021. during the arguments, it was fairly conceded by the department that nothing was recovered from the accused. As per the facts, accused has not been interrogated even once post his custody in JC which is indicative of the fact that accused is not required for any interrogation purpose. The recovery has already been effected. Nothing incriminating has



been recovered from the accused. It appears that department is in possession of entire documentary evidence. The plea of the accused that he is not involved in the alleged offence and of the department that he attempted to smuggle gold with his associates would be considered at the time of trial. At the stage of bail, only a prima facie view has to be taken of the gamut of facts. The facts do not provide justification for further incarceration of the accused in view of the recovery and possession of documentary evidence by the department. So far the apprehension of the department that accused may tamper with the evidence is concerned upon his release, the said apprehension seems to be vague as no evidence has been brought forth to substantiate it. The apprehension of the department regarding tampering of the evidence or influencing any witness can be addressed by imposing strict conditions. Apparently, accused conform the tripod test i.e. he is not a flight risk or threat to the witnesses or tampering the evidence.

So far as the concern of the department that the instant case falls under the socio economic offence leading to loss to exchequer and the same requires strict view in this regard the following judgment is important, **"H.B. Chaturvedi Vs. CBI : 2010(3) JCC 2109** it was held by Hon'ble High Court of Delhi "*para 12...Bail, it has been held in catena of decision is not to be withheld as punishment. Even assuming that the accused is prima facie guilty of a grave offence, bail cannot be refused in an indirect process of punishing the accused person before he is convicted. Furthermore, there is no justification for classifying offence into different categories such as an economic offences and for refusing bail on the ground that the offence involved belonging to particular category. It cannot, therefore, be said that bail should invariably be refused in cases involving socio economic offences.*"

Accordingly, considering the age, conduct of the accused, his period of incarceration, antecedents, the accused is entitled for bail subject to furnishing PB/SB in the sum of Rs. 1 lacs with one surety in the like amount subject to following conditions:-

1. That the accused shall join the investigation as and when directed by the investigating agency.
2. The accused shall not tamper with the evidence or influence the witnesses which will be examined by the department during investigation.
3. That accused shall not leave the country without the permission of the Court and deposit his passport with the IO within seven days.
4. That accused shall not indulge in similar offence in future.
5. That accused shall appear before the Court on each and every date of hearing.

Needless to say that in case of breach of any conditions department may approach the Court for cancellation of bail. The application stands disposed off.

(Dr. Pankaj Sharma)
CMM/ND/Patiala House Courts
New Delhi/21.12.2021