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% 21.11.2008

Present: Mr. Pradeep Jain for the petitioner.
Mr. Satish Aggarwala for the respondent.

+Crl.M.A. No. 13623/2008

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→ Allowed subject to all just exceptions.

The application stands disposed of.

Bail Appln. No. 2355/2008

Notice.

Mr. Satish Aggarwala accepts notice. Counsel states that he has already filed the advance reply to the present bail application and he shall address the arguments based on the said reply.

By way of this application moved under Section 438 Cr.P.C. the petitioner seeks grant of anticipatory bail.

Counsel appearing for the petitioner submits that already this Court has granted bail to one Mr. Vineet Gupta vide orders dated 6th November, 2008 and the case of the present petitioner is also similar to that of Mr. Vineet Gupta except the fact that Mr. Vineet Gupta sought regular bail and in this case the

petitioner is seeking anticipatory bail. This fact is not disputed by the counsel for the respondent except the fact that in the case of Vineet Gupta goods were in the custody of Department while in this case goods were never seized and, therefore, there is no question of their release as the goods were imported in the year 2007 and the enquiry was initiated in the year 2008. Mr. Pradeep Jain counsel submits that in any case it can not be denied that the petitioner had taken the delivery of the goods after the payment of customs duty as per law. Another aspect canvassed by Mr. Satish Aggarwala, counsel appearing for the respondent is that Vineet Gupta remained in judicial custody for about more than one month while the present petitioner is seeking anticipatory bail and he has been absconding despite 13 notices sent under Section 108 of the Customs Act by the Department. Mr. Satish Aggarwala, counsel for the respondent also submits that complaint against the petitioner has separately been filed before ACMM, Delhi on 8.10.2008 for non-compliance of the summons. Mr. Satish Aggarwala has further heavily placed reliance on the judgment of the Apex Court Crl. A. No. 1575/2008 titled Union of India vs Padam Narain Aggarwal

etc. The contention of the counsel for the respondent is that in the facts before the Apex Court also the respondent in that case did not join the investigation despite various summons issued against them by the Department and the Apex Court deprecated the order passed by the lower Court granting anticipatory in such like cases. Counsel appearing for the respondent has also placed reliance on another judgment of the Apex Court reported **Enforcement Officer, TED, Bombay vs Bher Chand Tikaji Bora - 2000 (121) ELT 7 (SC)** in support of his proposition that anticipatory bail should not be granted in the case of white collar criminals like the respondent against whom the allegation is that he has violated the provisions of the Foreign Exchange Regulation Act and such a criminal is a menace to the society and, therefore, unless he alleges and establishes in the materials that he is being unnecessarily harassed by the investigating agency, the Court would not be justified in invoking the jurisdiction under Section 438 Cr.P.C. Counsel appearing for the respondent has also placed reliance on the judgment of this Court Bail application No. 820/2007 titled **Lalit Goel vs Commissioner of Central Excise (Delhi-I)** where the regular bail

of the accused was rejected by this Court. The contention of the counsel for the respondent is that in the said case the petitioner was facing criminal prosecution for violating Section 135 of the Customs Act where the punishment is only three years whereas in the present case the punishment is seven years and the said bail matter was a regular bail unlike in the present case. Learned counsel for the respondent has further placed reliance on the judgments reported **Inderjeet Nagpal vs Directorate of Revenue Intelligence (DRI) 2005(1) C.C. case (HC) 382** and **Crl.M.(M) 3173/2001** titled **Balwan Sharma vs Director General, Directorate of Revenue Intelligence and Ors.** Counsel for the respondent also laid strong emphasis on the fact of suppression made by the petitioner at the time of seeking anticipatory bail earlier and due to the said suppression as per the counsel, the petitioner is not entitled for grant of bail. Counsel further submits that even otherwise the order passed by this Court earlier also attained finality and without their being any change of circumstances the petitioner cannot now move a fresh bail application. Counsel for the respondent has also

placed reliance on the order passed by the Sessions Court rejecting the bail of the petitioner on valid and tenable grounds.

Mr. Pradeep Jain, counsel appearing for the petitioner countering the said arguments of Mr. Satish Aggarwala submits that that there was no suppression on the part of the petitioner. Explaining the suppression part, counsel submits that earlier bail application was filed on 27th September, 2008 and the said bail application was taken up by this Court on 30th September, 2008. Counsel submits that at the time of filing of the application, the counsel was not aware of the fate of the decision of the application of Vineet Gupta and the same was a subsequent event which only came to the knowledge of the counsel on the evening of 27th September, 2008. Counsel thus submits that there was no willful suppression on the part of the petitioner and had the counsel appearing for the petitioner known about the decision of Vineet Gupta then he would have certainly annexed the copy of the same along with his bail application. Counsel further submits that the earlier order passed by this Court did not take into consideration the facts and circumstances of the case and, therefore, the bail of the petitioner was rejected

merely on the ground of the said suppression made by him and not on its merits. Counsel also submits that as observed by this Court the petitioner had approached the Sessions Court under Section 438 so as to seek grant of anticipatory bail and after the dismissal of the same the petitioner has now approached this Court. Another argument advanced by the counsel for the petitioner explaining and justifying his non-response to the summons issued by the respondent is that during this intervening period he was taking his legal remedies so as to seek grant of bail and had the petitioner appeared before the DRI pursuant to the said notices then certainly he would have been arrested. Counsel also states that earlier the petitioner had appeared before the DRI on two occasions in response to the notice sent by the Department i.e. 27th June, 2008 and 7th July, 2008 and detailed statement of the petitioner was recorded by the DRI. Counsel for the petitioner further submits that the petitioner is ready to join the investigation as and when he is called by the respondent. Another explanation given by the petitioner for his non-appearance before the DRI is that the petitioner was well aware of his fate because of the stand taken

by the respondent vis-à-vis Vineet Gupta, who was arrested in the case and, therefore, apprehending his arrest at the hands of the DRI, the petitioner though wanted, but did not respond to the notice and was seeking his legal remedies to which he is entitled. Counsel for the petitioner further submits that the petitioner shall produce Lokeshwar Dayal proprietor of M/s Mega Trading Co. within a period of three days. Counsel also states that the petitioner shall make serious endeavour to produce Subhash, proprietor of other firm i.e. M/s Balaji. Counsel for the respondent submits that no documents were submitted by the petitioner at the time of his appearance before the DRI.

I have heard learned counsel for the parties at considerable length and gone through the records.

It is not in dispute that allegations against the present petitioner are identical to the allegations made by the Department against Vineet Gupta except the fact that in the present case the petitioner has already taken the delivery of the goods imported by him during the year 2007. I will not, therefore, deal with the legal submissions raised by the counsel

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for the respondent and counsel for the petitioner, which have been dealt with in detail in the said order dated 6.11.2008. The said order dated 6.11.2008 to that extent shall be read as part of this order as well. As regards the contention of the respondent that the order dated 30th September, 2008 passed by this Court attained finality, I do not find myself in agreement with the argument raised by the counsel for the respondent. No doubt this Court has observed that there was a deliberate suppression on the part of the petitioner in not disclosing the fact of the other person having been arrested by the investigating agency and rejection of his bail application, but going through the records it is revealed that the petitioner had filed the bail application on 27.9.2008 while the order in the bail application of Vineet Gupta was passed by the learned Sessions Court on the same date at about 3.00 p.m. The date and time is duly mentioned in the order passed by the learned Sessions Court at page 40 of the paper book. The bail application of the present petitioner was taken up by this Court on the morning of 30th September, 2008, therefore, one can take judicial notice of the fact that by that time order in the case of Vineet Gupta might not

have reached the counsel for the petitioner. The order dated 30th September, 2008 is not an order passed on merits after taking into consideration the merits of the case involved as the same was primarily passed taking into consideration the fact that the petitioner had failed to move the Sessions Court at the first instance and there was suppression on his part in not disclosing the fate of the other accused Vineet Gupta. However, now the petitioner has already moved the Session Court and the Session Court has not granted anticipatory bail to him, therefore, the petitioner cannot be deprived of his legal right to seek his remedy for the grant of anticipatory bail. Although it was expected of the petitioner to have appeared before the office of the DRI pursuant to the summons sent under Section 108 of the Customs Act so as to fully cooperate in the process of enquiry, but considering the fact that the other accused in similar circumstances was arrested, the apprehension of the appellant was genuine that he would be straightway arrested in case he appeared before the Authority. Moreover the appellant was taking his legal remedies during this period, therefore, it cannot be said that there was

any willful attempt on the part of the appellant to scuttle the course of the enquiry. The judgment of the Apex Court relied upon by the respondent in the case of Crl. A. No. 1575/2008 titled Union of India vs Padam Narain Aggarwal is peculiar to its own facts as in the said case the respondents were being merely summoned under Section 108 of the Customs Act to give their statement in the enquiry and the High Court felt that the anticipatory bail application filed by them were premature and required to be disposed of by giving direction to the Department not to arrest the respondents without giving prior notice of 10 days. In the facts of such a case the Apex Court held that 10 days notice is not required when the Department had summoned the respondent for their statement and there was no reason for them to seek their anticipatory bail. The present case is not identical to those facts as in this case the other accused Vineet Gupta was already arrested by the Department, who remained in judicial custody for a period of more than one month and, therefore, there was genuine apprehension to the appellant that he would immediately be arrested if he appeared before the Authorities pursuant to the summons sent by the Department

under Section 108 of the Customs Act. The judgment passed in Bail Application No. 820/2007 passed by Hon^{ble} Mr. Justice B.N. Chaturvedi is also not applicable to the facts of the present case as in that case there was evasion of customs duty to the extent of Rs. 1.27 crores and in the given facts the Court did not feel inclined to grant regular bail to the accused. Admittedly there is no evasion of custom duty in the present case although as per the counsel for the respondent prohibition under Section 135 of the Customs Act should be viewed more seriously than even the evasion. The other judgments cited by the respondent are also not applicable to the facts of the present case. Even otherwise similar issues have been dealt in detail in the order dated 6.11.2008 and are not being repeated here.

Considering the aforesaid facts and circumstances, I am inclined to grant anticipatory bail to the petitioner.

In the event of arrest, the petitioner shall be granted bail, subject to his furnishing personal bond in the sum of Rs.1,00,000/- with one surety in the like amount to the satisfaction of the SHO/I.O. of the concerned police station, subject to the condition that the petitioner shall fully cooperate

in investigation and will not create any hindrance or impediment during the course of investigation and will not leave the country without prior permission of the Court during the course of investigation. The petitioner shall produce Lokeshwar Dayal, proprietor of M/s Megha Trading Company before the Investigating Officer of respondent within a period of three days hereof and shall make all efforts to produce Subhash, proprietor of other firm M/s Balaji

With these directions, the petition is disposed of.

DASTI.

November 21, 2008
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KAILASH GAMBHIR, J.

BAIR APPLICATION

- Disposed of

21.11.08

⇒ Cr. MA-15147/13 (for modification)
* ⇒ Cr. MA-15148/13 (Enc. Certified
Copies)

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IN THE HIGH COURT OF DELHI AT NEW DELHI

BAIL APPLN. 2355 of 2008

GOPAL AGGARWAL Petitioner
Through: Mr. Subhankar Jha, Advocate.

versus

DIRECTOR OF REVENUE INTELLIGENCE Respondent
Through: Mr. Satish Aggarwala, Advocate.

CORAM: JUSTICE S.MURALIDHAR

ORDER
14.03.2014

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Crl.MA. No. 15147 of 2013 (seeking modification of order dated 21st November 2008)

Learned counsel for the Petitioner seeks permission to withdraw this application with liberty to approach the learned trial Court in accordance with law. Accordingly, this application is dismissed as withdrawn.



S.MURALIDHAR, J

MARCH 14, 2014
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