

IN THE HIGH COURT OF DELHI

Bail Application No.1554/2009

Date of decision: 11th August, 2009

Mahinder Pal Singh Applicant
through: Dr. Ashutosh, Adv. with Mr. Jai Singh, Adv.
for petitioner.

VERSUS

Directorate of Revenue Intelligence Respondent
through: Mr. Satish Aggarwal, Adv. with Mr. Shirish
Aggarwal, Adv. for the respondent.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

1. Whether reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

GITA MITTAL, J(Oral)

+ CrI.M.A. No.9173/2009

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Allowed, subject to just exceptions.

Bail Application No.1554/2009

1. By this application, the petitioner who has been summoned to join investigation by the Directorate of Revenue Intelligence, seeks grant of anticipatory bail in the case which has been investigated by it. Mr. Satish Aggarwal, learned counsel representing the Directorate of Revenue Intelligence, has placed before this court a copy of the

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reply dated 10th August, 2009 which has been filed to this application. According to the Directorate of Revenue Intelligence, it is conducting investigation into misdeclared imports effected through ICD Tuglakabad where various goods were imported duty free in the guise of books thereby evading substantial amount of custom duty which was lawfully payable on the imports. It is alleged that during the period February, 2008 till January, 2009, more than 28 consignments of worn clothing, electronic and electrical goods valued at approximately Rs.5.00 crores and involving custom duty evasion of approximately Rs.2.00 crores were cleared duty free by the misrepresentation that they were books. These transactions were undertaken in the name of 15 firms, of which 11 firms have been found to be fictitious. The investigation has further revealed that even in the period prior thereto, several consignments have been cleared adopting the same modus operandi and again certain fictitious firms were used for effecting duty free imports. It is further stated that the investigations have revealed that a majority of these fictitious firms were provided by two brothers namely Maninder Pal Singh, the petitioner herein and Prit Pal Singh.

2. It is further alleged that these firms were provided against

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financial considerations based on the nature of the consignment. According to the investigating agency, the fraud has been allegedly masterminded by a cartel of persons including the present petitioner. Others who are parties to the cartel have admitted their offences and have allegedly specifically implicated the petitioner. Statements of several persons implicating the petitioner and his brother have been made under Section 108 of the Customs Act. One Shri Amit Sharma whose role is being investigated, made a statement on 18th February, 2009 wherein he has categorically stated that the petitioner along with his brother Prit Pal Singh used to provide all the necessary bank related documents of imports facilitated by him through the fictitious firms.

3. On the other hand, learned counsel for the petitioner has contended that it is the case of the investigating agency that certain benefits have been availed illegally and that no offence against the present petitioner has been made out. On behalf of the petitioner, it is submitted that he has been falsely implicated in the case and that the only reason for arresting him is to extort a signed statement by coercion and use of third degree methods. It is submitted that the

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applicant has no intention of evading due process and is willing to join investigation. It is contended that if interim protection is given to the petitioner, he shall appear before the investigating agency.

4. The record which has been placed before this court would show that the petitioner has been repeatedly summoned by the investigating agency since the beginning of February, 2009. It is stated by Mr. Aggarwal, learned counsel for the respondent that he has been summoned on almost ten occasions. Despite receipt of summons, the applicant has been able to avoid any appearance before the investigating agency. It is urged that it is evident thereby that there is no sincerity or bona fide in the submissions which are being made today of willingness to join investigation.

5. So far as the nature of allegations against the applicant are concerned, there can be no manner of doubt that the investigation which has been conducted relates to serious matters. Apart from making of fraudulent imports, there is a conspiracy with regard to evasion of crores of rupees of custom duty thereby a loss has occasioned to the public exchequer and the state revenue. Mr. Aggarwal, learned counsel has also pointed out that there is also a grave national and security risk inasmuch as the investigating agency

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is looking into all aspects with regard to the nature of the goods which have been so fraudulently imported. It is pointed out that utilising the shield of duty free items, articles which could prove to be dangerous to the national security may have been imported.

6. It is evident that the applicant has been able to obstruct investigation into the matters which are of serious nature and may involve interests of national security as well. The investigating agency urgently requires the assistance of the petitioner to identify other fictitious firms in whose names the imports have been effected. The passage of eight months since the petitioner was summoned may have led to destruction or tampering of valuable and material evidence.

7. Prima facie it would appear that a concerted effort has been made to obstruct investigation inasmuch as the applicant has admittedly received the summons which have been served on him. The applicant is bound to act in accordance with law and facilitate investigation.

8. Learned counsel for the petitioner places reliance on the pronouncement of the Apex Court in **AIR 2009 SC 628 Deepak Bajaj Vs. State of Maharashtra & Anr.** to contend that the liberty

of the petitioner stands on the highest pedestal and that the right of the applicant to remain free without incarceration as guaranteed under Article 221 of the Constitution of India has to be protected. It needs no elaboration that so far as the arrest of a person is concerned, the same is legally permissible provided that the same is in accordance with specific statutory provisions and well settled principles of law. The case before the Apex Court related to preventive detention and the applicant had approached the Apex Court prior to his being arrested. The court was called upon to consider the legality of the detention order which had been passed and was of the view that the detention order was not in accordance with the statutory provisions. In this background it was held that the petitioner could not be incarcerated as the order of detention was contrary to law.

The present case does not raise any such issue.

9. There is no such material issue in the instant case. The petitioner has been called to join investigation which he has successfully evaded. The submissions made on his behalf when tested against the petitioner's past conduct, inspire no confidence.

10. The matter not only relates to evasion of custom duty but import

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of other articles utilising the shield of fictitious firms which have been made available in conspiracy by the petitioner which could prove to be dangerous to the national security.

11. Prima facie, it cannot be held that the acts attributed to the petitioner do not fall under the offences detailed under the Customs Act. The matter is at the stage of investigation.

For all these reasons, I find no merits in this application which is dismissed.

13. Needless to say, the respondent shall proceed in the matter in accordance with the well settled principles of law.

It is further made clear that nothing herein contained is an expression of opinion on the merits of the case.

August 11, 2009

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Gita Mittal, J.