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% 19.11.2010

Present: Mr. A.S. Chandhiok, ASG with Mr. Satish Aggarwal, Ms. Vibha Dhawan, Mr. G.S. Parwanda and Mr. Piyush Sanghi, Advs. for the Petitioner.
Mr. Pradeep Jain, Mr. Dveep Ahuja, Mr. Shubhankar Jha, Mr. M.J. Michael, Mr. A. Mishra, Advs. for the Respondents.

+ CrI. M.C. 3011/2010 & M.A. 15355/2010 (Stay)

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Respondents had filed an anticipatory bail application before the Additional Sessions Judge, New Delhi which has been disposed of vide order dated 14th September, 2010.

Operative portion of the order reads as under :-

“To my considered view appropriate order in this case could be that if authorized officer of the department wants the arrest of the applicants-accused and obtains prior approval of the Commissioner of Central Excise, let a seven days notice be given to the applicants before the arrest is effected so that the applicants may avail their remedy of anticipatory bail. Present anticipatory bail application in view that Excise Inspector is not yet armed with requisite prior approval of the Commissioner Central Excise and that situation allays the apprehension of arrest accordingly disposed of.”

(Emphasis supplied)

2. Petitioner is aggrieved by the direction of the Additional Sessions Judge regarding serving of seven days notice on the

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physical file have been compared and
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respondents prior to their arrest.

3. Learned counsel for the petitioner has contended that no such direction could have been passed by the Additional Sessions Judge in view of the law laid down by the Supreme Court in Union of India Vs. Padam Narain Aggarwal AIR 2009 SCC 254. It is contended that such direction is neither legal nor valid. Such a direction tantamounts to curtailing the statutory authority of Central Excise officers to arrest any person who had committed a non-bailable offence. Thus, it is contended that impugned order is liable to be set aside.

4. As against this, learned counsel for the respondents has vehemently contended that in the afternoon of 21st August, 2010 officers of Central Excise Department raided the business premises of the respondents as also their residences. Raid continued up to wee hours of 22nd August, 2010. Respondents were unauthorizedly taken to Excise office. Under coercion, their statements under Section 14 of The Central Excise Act, 1944 (for short hereinafter referred to as "the Act") were also recorded, inasmuch as, four cheques of ₹25 lakh each were taken from the respondent no. 2, who is proprietor of M/s Vardhman Metal. Besides this ₹17,60,000/- in cash was also illegally seized. Respondents

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had not been carrying on manufacturing activity and their units were not liable to be registered under the Act. In spite of this, statements of the respondents were taken to the effect that they had been indulging in manufacturing activities, thereby, provisions of the Act were attracted. These statements were retracted by the respondents in the morning of 22nd August, 2010 itself. Respondent no. 2 has also filed a Writ Petition (Civil) 7241/2010 seeking refund of cheques worth ₹1 crore unauthorizedly collected by the officers of the petitioner. Approval of the Commissioner of Excise for arrest of respondents can be obtained by the Inspector, Central Excise within short period as it has to be accorded by their own superior officer i.e. Commissioner of Excise. In case respondents appear before the Excise officers even in response to the notice under Section 14 of the Act, there is every likelihood of their being arrested, rendering them remediless in case no such protection is granted.

5. Above contentions on merits of the case have been disputed by the counsel for the petitioner.

6. Since, this Court is called upon only to answer the question whether notice of seven days can be granted by the Additional Sessions Judge under the law governing the field, I

need not to venture into the merits of the case.

7. Vide the impugned order dated 14th September, 2010, learned Additional Sessions Judge has observed that in view of the fact that Excise Inspector had not been armed with requisite prior approval of the Commissioner Central Excise, apprehension on the part of the respondents was non-existent. It appears that for this reason petitioner had been directed to give seven days notice to the respondents before their arrest, so as to enable them to avail the remedy of anticipatory bail. In Padam Narain's case (supra), notice under Section 108 of the Customs Act, 1962 was served upon the respondents for recording of their statements. Apprehending their arrest, respondents had approached Rajasthan High Court seeking anticipatory bail which was rejected being pre-mature. High Court was of the view that since the respondents were merely summoned under Section 108 of the Customs Act, 1962 to give their statements in an inquiry, anticipatory bail applications filed by them were pre-mature. At the same time, Custom Officers were directed to give ten days notice in case they intended to arrest the respondents. Special Leave Petition was filed in the Supreme Court by the Union of India wherein, leave to appeal was

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granted and while disposing of the Appeal, Supreme Court held that such directions were neither legal nor in consonance with law. It was held that no such blanket direction could have been passed. It may be noted here that Section 14 of the Central Excise Act is pari materia with Section 108 of the Customs Act.

8. In view of the law laid down in Padam Narain's case (supra), I am of the view that direction given by the Additional Sessions Judge mandating the petitioner to give seven days prior notice before the arrest of the respondents is not sustainable. Accordingly, the impugned order is set aside.

9. It is also made clear that in case petitioner seeks the presence of the respondents, they may have to issue a fresh notice under Section 14 of the Act. Respondents will also be at liberty to approach the court of competent jurisdiction seeking anticipatory bail in case they apprehend their arrest in future.

10. Petition is disposed of in the above terms.

11. Copy of this order be given Dasti to both the parties.


A.K. PATHAK, J.

NOVEMBER 19, 2010

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