IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.6.2015

Date of verdict : 18.06.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Crl.O.P.No.5584 of 2015

The Senior Intelligence Officer,
Directorate of Revenue Intelligence,
Regional Unit,
No.1288, Trichy Road, Coimbatore-18. ... Petitioner

Vs

K.P.Karunamoorthy,
Director,
M/s.P.V.Spinning Mill India (P) Ltd. ... Respondent

Criminal Original Petition filed under Section 439(b) Cr.P.C. to cancel the anticipatory bail granted in Crl.M.P.No.3860 of 2015 dated 13.2.2015 by the learned Principal District and Sessions Judge, Coimbatore.

For Petitioner : Mr.Su.Srinivasan,
Asst. Solicitor General of India.

For Respondent : Mr.R.Gandhi, Senior Counsel
for Mr.R.G.Narendran

ORDER

The present criminal original petition has been filed to cancel the anticipatory bail granted to the respondent in Crl.M.P.No.3860 of 2015 dated 13.2.2015 by the learned Principal District and Sessions Judge, Coimbatore.

2. The petitioner is the complainant and the respondent is the accused in File No.VIII/48/03/2014 DRI CRU, on the file of the Directorate of Revenue Intelligence, Coimbatore.

3. The case of the petitioner, in brief, is as follows:-

(a) On the basis of the specific intelligence that M/s.P.V.Spinning Mill India (P) Ltd., Sathyamangalam Taluk had imported capital goods i.e., machineries required for the manufacture of cotton yarn, under Export Promotion Capital Goods (EPCG) Scheme under various EPCG licences and failed to meet the export obligation fixed at the time of import of the machineries and managed to get the export obligation discharge certificate (EODC) by adopting fraudulent methods, the Directorate of Revenue Intelligence (DRI) visited the above textile mill on 14.8.2014 and verified the records and machineries imported under EPCG Scheme. Under mahazar proceedings, the machineries imported under EPCG licence Nos.3230009062 dated 9.2.2007, 3230014306 dated 19.1.2010, 3230016822 dated 1.6.2011 and 3230018441 dated 26.10.2012 all valued at Rs.4,96,25,720/- with duty foregone of Rs.1,06,48,442/- and indigenously procured machineries under EPCG licence No.3230018441 dated 26.10.2012, valued Rs.1,09,20,300/- with the duty foregone of Rs.13,49,747/- were seized under Customs Act, 1962, on seeing that the textile mill never made a single export so far and the export obligation was shown to have met out by collecting and submitting the shipping bills of certain other parties, who had no business connection, link or relationship with the respondent.

(b) A statement dated 14.8.2014 was recorded from the Director of M/s.P.V.Spinning Mill India (P) Ltd., under Section 108 of the Customs Act, 1962. So far, the respondent had obtained EODC's in respect of EPCG licences 3230007337 dated 10.7.2006, 3230009062 dated 9.2.2007, 3230014306 dated 19.1.2010, 3230016822 dated 1.6.2011 and 3230018441 dated 26.10.2012. The value of the machineries imported under the above EPCG licences was Rs.26,67,51,119/-. The duty foregone was Rs.4,12,37,333/- i.e., the duty was not paid at the time of import / the duty amount paid at the time of indigenous procurement was got reimbursed on account of EPCG Scheme. The export obligation fixed for the mill was Rs.33,92,22,782/- i.e., the respondent was to export cotton yarn manufactured out of the capital goods obtained under EPCG scheme to the value of Rs.33,92,22,782/- and should have realised the foreign exchange of India. But, the respondent had not made any exports and had not realised any foreign exchange to India on account of exports of goods manufactured with the use of capital goods imported under the EPCG scheme and thereby violated the essential condition of the scheme and became ineligible to avail the exemption continuously and also liable to pay the differential import duty, which they had not paid at the time of procurement of capital goods under import / Central Excise duty.

(c) M/s.P.V.Spinning Mill India (P) Ltd., imported / indigenously procured capital goods under EPCG scheme, installed the machineries at their premises, but failed to export goods manufactured out of the machineries so imported to meet the export obligation fixed at the time of import. The respondent had also fabricated documents and submitted to JDFT for getting EODC against the EPCG licences under investigation. The shipping bills filed before the JDFT for getting the EODC were fabricated documents and the export obligation claimed to have been met through third party shipping bills, were not the exports of the respondent and the result is the respondent had not fulfilled the export obligation. The respondent neither exported any goods manufactured with the use of the capital goods imported under EPCG scheme and realised foreign exchange nor made any exports through third parties viz., merchant exporters from the goods manufactured with the use of capital goods imported under EPCG scheme and installed at his premises. As the respondent has not fulfilled the export obligation, the availment of EPCG scheme by the respondent has become wrong and the respondent is liable to pay differential duty amount of Rs.4,12,37,333/- both Customs and Central Excise duty, along with appropriate interest from the date of import / procurement of machineries. Further, as the respondent has not exported the goods to the value of Rs.33,92,22,782/-, he has brought loss to the reserve of foreign exchange of the nation by not realizing the foreign exchange equivalent value of Rs.33,92,22,782/-.

(d) The case against the respondent is that because of his fraudulent methods adopted to obtain Export Obligation Discharge Certificate, there is a loss of Rs.4.12 Crores to the Government of India and in other words, the issue is about safeguarding Rs.4.12 crores of public money. The respondent filed an anticipatory bail petition before the learned Principal District and Sessions Judge, Coimbatore on 16.12.2014 in Crl.M.P.No.3860 of 2015. The petitioner has also filed a suitable counter affidavit to the said anticipatory bail petition. However, after a period of nearly two months, the learned Principal District and Sessions Judge, Coimbatore granted anticipatory bail to the respondent with a condition that the respondent should produce a surety of Rs.50,00,000/- and produce two other sureties for a sum of Rs.2,00,000/- and also with other conditions. The learned Principal District and Sessions Judge, Coimbatore has granted anticipatory bail to the respondent on the following grounds viz.,

(i) Prosecution is not mandatory under the Customs Act, 1962.

(ii) All the machineries have been seized by the department for addressing its claim.

(iii) The documents and other papers were already seized by the department.

Now, the present petition has been filed for cancellation of anticipatory bail granted by the learned Principal District and Sessions Judge, Coimbatore stating that the observation of the learned Judge for granting bail is not correct and legally tenable.

4. The respondent has filed a detailed counter, wherein it

has been stated that the petitioner has seized the machineries belonging to the respondent worth about Rs.6,05,00,000/- on 14.8.2014. However, in the petition for cancellation of anticipatory bail, the petitioner has alleged that there is a duty evasion to the tune of Rs.4.12 crores. But, he purposely omitted to state about the seizure of the machineries worth about Rs.6,05,00,000/- from the respondent. The respondent is fully cooperating with the petitioner and a mere reading of the mahazar clearly establishes the said fact. Absolutely, no ground has been made out for cancellation of the anticipatory bail granted to the respondent. Thus, he sought for dismissal of the petition.

5. The main submission of the learned Assistant Solicitor General of India appearing for the petitioner is that the Court below has granted anticipatory bail to the respondent mainly on the ground that the prosecution is not mandatory under the Customs Act, 1962 and all the machineries have been seized by the department for addressing its claim and the documents and other papers were already seized by the department. The reasonings given by the learned Judge are factually incorrect. When an offence is investigated by the officers of Customs, right from the rank of the Inspectors to Assistant Commissioners, if any person involved in the offence is not cooperating with the investigation, engaging himself in tampering with evidence or intimidating the witnesses, then the investigating officer is empowered to arrest the person for free and fair investigation. Para 15 of Chapter 30: Offences and Penal Provisions of the Customs Manual of Central Board of Excise and Customs issued on 2.2.2012, deals with prosecution, which says that no prosecution proceedings can be launched in a Court of Law against any person under Customs Act and no cognizance of any offence under Sections 132 to 135 of the Customs Act, 1962 can be taken by any Court, except with the previous sanction of concerned Commissioner of Customs. Hence, based upon the results of investigations and evidence brought on record, the Commissioners of Customs apply their mind before sanctioning prosecution and after being satisfied that there are sufficient reasons justifying prosecution, then a criminal complaint could be filed. Therefore, the reason assigned by the Court below that the prosecution is not mandatory under the Customs Act, 1962 is not correct. Similarly, it is also not correct that the petitioner has seized all the machineries of the respondent to address its claim. Similarly, the petitioner has not seized all the documents and other papers, since the respondent is not cooperating with the investigation. Only if custodial interrogation is given, the petitioner can seize all the documents and other papers. But, without considering all these aspects, the Court below has granted anticipatory bail to the respondent. In this regard, he has relied upon the judgment reported in LAWS (SC)-2012-10-40 - Kanwar Singh Meena v. State of Rajasthan in support of his contention that releasing the accused involved in a heinous crime on bail, ignoring the relevant material is legally not tenable. Hence, gthe said order is liable to be set aside. For the same proposition, he has also

relied upon the judgments reported in LAWS (SC)-2013-5-27 - Central Bureau of Investigation v. V.Vijay Sai Reddy, LAWS (SC)-2008-4-163 - Dinesh M N v. State of Gujarat and the decision of the Kolkata High Court made in C.R.M.No.4830 of 2014 in the matter of Directorate of Revenue Intelligence, Calcutta.

6. On the other hand, learned senior counsel appearing for the respondent by inviting the attention of this Court to the copy of the mahazar prepared by the investigating officer in the presence of the witnesses, submitted that even as per the mahazar, the value of the seized goods is Rs.6,05,46,019/-. Further, learned senior counsel by relying upon the judgments of the Hon'ble Supreme Court reported in (1995) 1 Supreme Court Cases 349 - Dolat Ram and others v. State of Haryana and (2009) 10 Supreme Court Cases 652 - Hazari Lal Das v. State of West Bengal and another, submitted that only if the respondent abused the anticipatory bail granted to him, the same could be cancelled. In the instant case, absolutely, there is no allegation against the respondent that he is abusing the concession given to him. Thus, he sought for dismissal of the petition.

7. Keeping the submissions made on either side, I have carefully gone through the entire materials available on record.

8. Though several submissions were made by the learned Assistant Solicitor General of India stating that the reasons assigned by the Court below for granting anticipatory bail are not factually correct, in my considered opinion, the said submissions made by the learned Assistant Solicitor General of India will not serve as a ground for cancellation of anticipatory bail granted to the respondent. Once anticipatory bail is granted by the Court below, it could be cancelled only if the respondent abuses the said concession. In this regard, a reference could be placed in the judgment reported in (1995) 1 Supreme Court Cases 349 - Dolat Ram and others v. State of Haryana, wherein it has been held as follows:-

> " Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. Generally speaking, the grounds for cancellation of bail broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner

without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial."

9. In the decision reported in (2009) 10 Supreme Court Cases 652 - Hazari Lal Das v. State of West Bengal and another, the Hon'ble Supreme Court by relying upon the above said decision in the case of Dolat Ram and others v. State of Haryana reported in (1995) 1 Supreme Court Cases 349, has held as follows:-

> " 7. There is nothing on record that there has been interference or attempt to interfere with the due course of administration of justice by the appellant. It also does not appear from the record that the concession granted to him has been abused in any manner. No supervening circumstances have surfaced nor shown justifying cancellation of anticipatory bail. The judicial discretion exercised by the Sessions Judge in granting the anticipatory bail has been interfered with by the High Court in the absence of cogent and convincing circumstances. We are, thus, satisfied that the impugned order cannot be sustained."

10. The dictum laid down in the above cases would clearly show that once anticipatory bail is granted, the same cannot be cancelled in a mechanical manner. Only if there is any abuse of concession granted to the accused, then only the court can cancel the anticipatory bail. In the instant case, even according to the learned Assistant Solicitor General of India, it is not the case of the petitioner that the respondent is abusing the concession granted to him. On the other hand, it is the submission of the learned Assistant Solicitor General of India that the reasons assigned by the Court below for granting anticipatory bail to the respondent are factually incorrect. The said submission will not serve as a ground for cancellation of anticipatory bail granted to the respondent.

11. For the reasons stated above, I am of the opinion, the petitioner has not made out any case to cancel the anticipatory bail granted to the respondent in Crl.M.P.No.3860 of 2015 dated 13.2.2015 by the learned Principal District and Sessions Judge, Coimbatore.

12. In fine, the petition is dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sbi

To

1.The Principal District and Sessions Judge,
Coimbatore.

2.The Senior Intelligence Officer,
Directorate of Revenue Intelligence,
Regional Unit,
No.1288, Trichy Road, Coimbatore-18.

3.The Asst. Solicitor General of India,
Chennai.

1 cc to Mr.Su.Srinivasan, Advocate Sr.29908
1 cc to Mr.K.G. Narendiran, Advocate Sr.11139

Crl.O.P.No.5584 of 2015

CNR(CO)
Eu 02.07.15