

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: February 03, 2015

+ CRL.M.C. 3627/2013

VIKAS AGGARWAL

..... Petitioner

Through: Dr. Ashutosh & Mr. D. Singh,
Advocates

versus

DIRECTOR, DRI

..... Respondent

Through: Mr. Satish Aggarwala &
Mr. Amish Aggarwala, Advocates

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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While admitting petitioner to bail, trial court vide impugned order of 29th October, 2015 has directed petitioner not to leave the country without prior permission of the trial court and petitioner is aggrieved by this condition.

At the hearing, it was submitted by learned counsel for petitioner that the Apex Court in *Om Prakash & anr. Vs. Union of India & anr.* (2011) 14 SCC 1 has declared that the offence under Section 135 of the Customs Act is bailable but still the condition of taking permission of the trial court has been erroneously imposed and so, it needs to be waived. Alternatively, petitioner's counsel had relied upon decision in *Sushil Suri Vs. State* (2006) 129 DLT 534 to submit that in case of bailable offence, a

Coordinate Bench of this Court had only called upon the accused to inform the court prior to the departure and upon return and no formal permission was required to be taken.

Mr. Satish Aggarwala, learned counsel for respondent submits that the decision *Om Prakash (Supra)*, cannot be made to operate retrospectively and in the year 2005 i.e. at the time of this incident, the offence in question was non-bailable and to secure the presence of petitioner, the condition to seek permission of the court has been rightly put, so that petitioner may not abscond. It was pointed out by learned counsel for respondent that the decision in *Sushil Suri (Supra)* has no application to the instant case, as it relates to a bailable offence whereas in the instant case, the offence is non-bailable.

Upon hearing and on perusal of the impugned order and the decisions cited, I find that Apex Court decision in *Om Prakash (Supra)* cannot be made to operate retrospectively. Since the offence in question was non-bailable in the year 2005 and in the year 2013 again it had been made non-bailable, therefore, decision in *Sushil Suri (Supra)* is of no avail to the case of petitioner. There is a purpose to call upon the petitioner to seek permission of the Court prior to leaving the country and the purpose is to secure his presence. Impugned order does not suffer from any illegality or infirmity. There is no substance in this petition and it is accordingly dismissed.

(SUNIL GAUR)
JUDGE

FEBRUARY 03, 2015

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