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

+ W.P.(CRL) 2388/2015

NITIN JAIN

..... Petitioner

Through

Ms.Anjali J. Manish, Mr.Karan
Chawla & Mr.Piyus Ranjan, Advs.

versus

D R I & ANR

..... Respondents

Through

Mr.Satish Aggarwal, Adv.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

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20.10.2015

The petitioner has prayed for issuance of an order or direction to the respondent authorities to permit interrogation under section 108 of the Customs Act, 1962, only within the office hours, and that also in the presence of an advocate, at a visible distance.

It has been submitted that the petitioner has apprehension that he would be subjected to force and coercion during the interrogation under section 108 of the Customs Act. The petitioner has all long cooperated with the investigation and has been appearing before the DRI on the dates and time prescribed/intimated.

The petitioner had last appeared before the customs department on 17.07.2015.

The apprehension in the mind of the petitioner of his being put to coercion, stems from the fact that while the petitioner was first summoned

by the customs department, he was directed to appear in the morning of 03.08.2015 and the notice regarding the same was dispatched and received by him only in the evening of the same day i.e. 03.08.2015.

Not only this, it has been submitted that when the petitioner appeared on 04.08.2015, he was arrested and he remained in custody till 18.09.2015. As long as the petitioner remained in judicial custody, no statement was recorded by the respondent. Only when the petitioner was released on bail, a notice was sent to him again on 01.10.2015.

The petitioner, therefore, contends that in order to allay the fear in his mind, he be permitted to be accompanied by a lawyer of his choice in the DRI office so that he is not put to any coercion or threatening by the interrogating authorities.

Mr.Satish Aggarwal, learned advocate appearing on behalf of the DRI, though, has denied all such statements made by the petitioner, but has opposed the innocuous prayer of the petitioner of permitting him to appear before the DRI along with a lawyer of his choice.

Mr. Aggarwala refers to a judgment of the Supreme Court namely ***Poolpandi vs. Superintendent, Central Excise*** 1992 (60) E.L.T. 24 (SC) wherein it was held that if a person is called from his house and is questioned in an atmosphere of customs office without assistance of his lawyer or friend, no constitutional right under Article 21 is violated.

Learned counsel for the petitioner, on the other hand, has drawn attention of this Court to the judgments delivered in ***Senior Intelligence Officer vs. Jugal Kishore Samra*** reported in (2011) 12 SCC 362 and ***Mahender Kumar Kundiya vs. Union of India*** reported in 2015 (319)

E.L.T. 9 (SC), where such a concession was accorded.

Considering the apprehension of the petitioner, this Court is inclined to acquiesce to the prayer made by the petitioner.

The petitioner would be permitted to be accompanied by his counsel to DRI Office when he next goes there for being interrogated under Section 108 of the Customs Act, 1962. The counsel accompanying the petitioner would be allowed to be present at the time of interrogation but only within the visible distance but beyond the range of audibility.

Counsel accompanying the petitioner would not insist for hearing any part of the interrogation which will take place inside the DRI Office.

The petition is allowed and disposed of in terms of the aforesaid.

Copy of the order be given dasti under the signatures of the Court Master.

ASHUTOSH KUMAR, J

OCTOBER 20, 2015
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