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

+ W.P.(CRL) 2665/2017 and Crl. M.A. No. 15301/2017 and
16523/2017

AMIT GOYAL

..... Petitioner

Represented by: Ms.Anjali J. Manish, Ms.
Priyadarshi Manish and Ms.
Nidhi Saini, Advocates.

versus

ADDL D G D R I & ANR

..... Respondents

Represented by: Ms. Pooja Bhaskar, Advocate.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

29.08.2018

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1. By this petition, petitioner inter alia prayed for the following prayers:

“a) Issue a writ order or direction in the nature of certiorari for quashing and setting aside the summons bearing No.DRI F.No.DZU/34/ENQ-05/2017/4249 dated 01.08.2017 under Section 108 of Customs Act, 1962;

b) Issue a writ order or direction in the nature of mandamus directing the Respondents not to issue further summons under Section 108 of the Customs Act, 1962;”

2. After filing of the present petition and time was sought by the respondent to file reply to the main petition and interim application, the petitioner filed further application being Crl.M.A. No. 2986/2018 seeking interim relief and allowing the presence of the petitioner's counsel during recording of the statement.

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3. Vide order dated 21st February, 2018, this Court disposed of Crl.M.A. No.2986/2018 by passing the following order:

Crl.M.A. 2986/2018

1. *Status report to the present application has been handed-over by learned counsel for the respondent and is taken on record.*

2. *The present writ petition was filed by the petitioner on 13th September, 2017 inter-alia with the following prayers:*

“a) Allow the presence of counsel for the petitioner during the recording of statement under Section 108 of the Customs Act, 1962 within visible range but beyond audible range;

b) Pass an-interim and ex-parte orders in terms of Para(a) given above;”

3. *Initially the petitioner was summoned on 1st September, 2017 and thereafter again on 3rd October, 2017. The petitioner did not join the said investigation on the said dates. On 8th February, 2018 when the matter came up before this Court, learned counsel for the petitioner stated that the petitioner has already challenged the vires of Section 108 of the Customs Act, thus, the present petition be posted at a later date. Hence the writ petition was renotified for 29th August, 2018.*

4. *Thereafter on 10th February, 2018 the petitioner received another summons dated 9th February, 2018 to appear on 16th February 2018. It appears that once a long date was given, again summon was issued to the petitioner, necessitating the petitioner to file the present application seeking the prayer that at the time of recording of statement under Section 108 of the Customs Act, presence of the counsel for the petitioner be permitted within the visible range though beyond audible range.*

5. *As per the status report to the present application, the prayer in the application is beyond the scope of the writ petition and the petitioner has not complied with the summons dated 9th February, 2018 nor explained his absence. It is further stated that no summons are in existence qua the petitioner, thus the application be dismissed.*

6. *On a specific query put to the learned counsel for DRI as to whether the respondent proposes to summon the petitioner again or not, learned counsel for the DRI states that he cannot emphatically deny that the petitioner will not be summoned again or that he may not be required to be summoned again.*

7. *This being the scenario, when the summons are received on a very short notice it is difficult for the petitioner to approach this Court and hence the issue whether counsel for the petitioner should be present when the petitioner is asked to join the investigation is required to be decided in the present application which cannot be held to be not maintainable and dismissed on the ground that no summons are pending.*

8. *Learned counsel for the DRI relies upon the decision of this Court in W.P.(CRL) 1673/2017 titled as 'Siddharth Jain Vs. UOI' decided on 31st May, 2017 wherein this Court held that there was no special facts and circumstances of the case meriting such privilege to be granted to the petitioner therein. One of the basic distinctions which this Court noted in W.P.(CRL) 1673/2017 was that Siddharth Jain was summoned as a witness only.*

9. *In the present case as per learned counsel for the DRI the petitioner was earlier arrested, detained under COFEPOSA, thus the petitioner is not being summoned as a witness but as an accused for an offence for the DRI. Therefore, the decision in the case of Siddharth Jain (supra) is not applicable to the facts of the present case.*

10. *Petitioner has also placed on record the order dated 28th July, 2017 passed by the Hon'ble Supreme Court in a SLP challenging the order of this Court in W.P.(CRL) 1673/2017 'Siddharth Jain Vs. Union of India & Ors.' wherein the order of this Court was set aside and the Hon'ble Supreme Court held:*

“The only question which needs consideration in this special leave petition is as to whether the petitioner should be allowed to have the company of his lawyer during interrogation by the customs officials under Section 108 of the Customs Act, 1962, for which summons have been issued to him.

We have heard the counsel for both the parties at length.

It is not necessary to discuss the facts or nuances of this case. Suffice is to state that having regard to the age of the petitioner and other attendant circumstances, in the peculiar facts of this case, we are of the opinion that the petitioner should be allowed the company of his Advocate. Ordered accordingly.

At the same time, it is made clear that the petitioner's advocate would be permitted to sit at a visible distance, but beyond audibility.

The special leave petition is disposed of in the aforesaid terms.”

11. *In the present case the petitioner has already been arrested though no complaint has been filed, thus investigation is going on. In view of the decision of the Supreme Court in D.K. Basu vs. State of W.B. (1997) 1 SCC 416 the petitioner is required to be provided assistance of a counsel.*

12. It is therefore directed that as and when in future any summons are issued to the petitioner by the respondent for appearance, the petitioner if so desires may be accompanied by a counsel of his choice who would be present at the time of interrogation though in a visible range but not in an audible range.

13. Application is disposed of. Order dasti.

4. As pursuant to the summons petitioner has appeared before the officer, no further orders are called for in the present petition and the order passed in CrI.M.A. No.2986/2018 has served the purpose of the writ petition.

5. Petition and application are disposed of.

MUKTA GUPTA, J.

AUGUST 29, 2018/‘vn’