

\$~5, 6 & 7

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(CRL) 3896/2018, CRL.M.As. 50249-50/2018

NITESH GAHLOT

..... Petitioner

Through: Mr. Vikram Chaudhri, Sr. Adv. with Mr. Arshdeep Singh, Mr. Harshit Sethi, Mr. Aditya Chopra, Mr. Rishi Sehgal, Mr. Saurabh Sethm Mohd. Umar Iqbal Khan, Advs.

Versus

DIRECTORATE OF ENFORCEMENT

..... Respondent

Through: Through: Ms. Maninder Acharya, ASG with Mr. Kirtiman Singh, CGSC, Mr. Prateek Dhanda, Mr. Sahil Sood, Mr. Harshul Choudhary, Mr. Viplav Achan, Advs. and Mr. Rahul Verma, Assistant Director (ED).

+ W.P.(CRL) 3897/2018, CRL.M.As. 50251-52/2018

VIRESH GAHLOT

..... Petitioner

Through: Mr. Vikram Chaudhri, Sr. Adv. with Mr. Arshdeep Singh, Mr. Harshit Sethi, Mr. Aditya Chopra, Mr. Rishi Sehgal, Mr. Saurabh Sethm Mohd. Umar Iqbal Khan, Advs.

Versus

DIRECTORATE OF ENFORCEMENT

..... Respondent

Through: Ms. Maninder Acharya, ASG with Mr. Kirtiman Singh, CGSC, Mr. Prateek Dhanda, Mr. Sahil Sood, Mr. Harshul Choudhary, Mr. Viplav Achan, Advs. and Mr. Rahul Verma, Assistant Director (ED).

+ W.P.(CRL) 3898/2018, CRL.M.As. 50254-55/2018

HARISH GAHLOT

..... Petitioner

Through: Mr. Vikram Chaudhri, Sr. Adv. with Mr. Arshdeep Singh, Mr. Harshit Sethi, Mr. Aditya Chopra, Mr. Rishi Sehgal, Mr. Saurabh Sethm Mohd. Umar Iqbal Khan, Advs.

Versus

DIRECTORATE OF ENFORCEMENT

..... Respondent

4

Through: Ms. Maninder Acharya, ASG with Mr. Kirtiman Singh, CGSC, Mr. Prateek Dhanda, Mr. Sahil Sood, Mr. Harshul Choudhary, Mr. Viplav Achan, Advs. and Mr. Rahul Verma, Assistant Director (ED).

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

%

21.12.2018

The petitioner has been summoned by the Enforcement Directorate for preliminary enquiry. He states that neither have the requisite documents been supplied to him nor does he know what the purpose of the enquiry is.

Mr. Vikram Chaudhri, the learned Senior Advocate for the petitioner, relying upon the dicta of the Supreme Court in ***Birendra Kumar Pandey & Anr. v. Union of India & Anr.*** W.P. (Crl.) 28 of 2012, submits that the relief sought in prayer (a) of the petition may be granted. The aforesaid judgment has *inter alia* observed as under:

“Crl. M.P. No. 9177 of 2012, has been filed on behalf of the petitioners, inter alia, for an order in similar terms as was passed in the case of Rajendra Arora and Others vs. Union of India and Others, on 7th December, 2010, or in the case of Mukund Bhai Patel v. Union of India and Others, on 4th March, 2011, so far as the recording of statement and interrogation of the petitioners’ was concerned, during the pendency of the instant petition.

As indicated hereinabove, we have had occasion to pass orders on similar applications before.

The petitioners have been served with notice under Section 108 of the Customs Act, 1962, to appear before the concerned customs authority for interrogation in connection with certain matters. The

5

petitioners are apprehensive that coercive attempts may be made to extort confessions from them. Accordingly, they have prayed that the interrogation of the petitioners be conducted not in the immediate presence of their lawyer, but that the petitioners' lawyer should be allowed to be present during the interrogation, within a visible but beyond hearing distance.

The prayer has been opposed by the learned Additional Solicitor General, Mr. P.P. Malhotra, who has brought to our notice the decision of a Three Judges Bench in the case of Poolpandi and Others v. Superintendent, Central Excise and Others (1992) 3 SCC 259. Mr. Malhotra pointed out that the very first paragraph of the said judgment mentions that the common question arising in the said case before their Lordships was the stand taken by the petitioners that they were entitled to the presence of their lawyers when they were being questioned during the interrogation under the provisions of the Customs ACT, 1962, or the Foreign Exchange Regulation Act, 1973. Their Lordships had noticed the difference of opinion of different High Courts in this connection and had rejected the submission made on behalf of the petitioners therein, that they were entitled to have their lawyers present at the time of interrogation. Such prayer, therefore, was disallowed.

Mr. Malhotra has also drawn our attention to the decision in Senior Intelligence Officer, Directorate of Revenue Intelligence v. Jugal Kishore Samra (2011) 12 SCC 362, wherein the decision in Poolpandi's case (supra) was also referred to and, ultimately, having regard to the facts of the case, a two-Judge Bench of this Court directed as follows:

"Taking a cue, therefore, from the direction made in D.K. Basu and having regard to the special facts and circumstances of the case, we deem it appropriate to direct that the interrogation of the respondent may be held

6

within the sight of his advocate or any other person duly authorized by him. The advocate or the person authorized by the respondent may watch the proceedings from a distance or from beyond a glass partition but he will not be within the hearing distance and it will not be open to the respondent to have consultations with him in the course of the interrogation."

In fact, the said direction is the very direction that the petitioners are seeking in this criminal miscellaneous petition.

Apart from the above, this Bench and other Benches of this Court have also had occasion to deal with similar matters and we had passed similar orders to the extent that the petitioners' counsel would be allowed to be present at the time of interrogation within visible distance, though beyond hearing distance.

In our view, the decision which was rendered in Poolpandi's case (supra) by a Bench of Three Judges, was in the context of the direct involvement of the learned counsel during the actual interrogation where the lawyer assumed an active role during the interrogation. On the other hand, the order that has been sought, as passed in various matters, does not contemplate such an eventuality. In fact, in terms of the orders which we have earlier passed, a lawyer has no role to play whatsoever during the interrogation, except to be at a distance beyond hearing range to ensure that no coercive methods were used during the interrogation.

Accordingly, we allow the criminal miscellaneous petition and direct that the petitioners' advocate should be allowed to be present during the interrogation of the petitioners but that he should be made to sit at a distance beyond hearing range, but within visible range and the lawyer must be prepared to be present whenever the petitioners are called upon

to attend such interrogation.

The criminal miscellaneous petition is disposed of accordingly."

In view of the above, the petitioner shall be allowed to be accompanied by a person of his choice, preferably a lawyer, who would be able to watch the enquiry/interrogation but not necessarily be within hearing distance. Let the petitioner appear before the Enquiry Officer along with a person of his choice on 26.12.2018 at 11 am in W.P.(CRL) 3896/2018; on 27.12.2018 at 11 am in W.P.(CRL) 3897/2018 and on 28.12.2018 at 11 am in W.P.(CRL) 3898/2018.

Prayer (b) is not pressed at this stage with liberty to the petitioner to approach this Court in changed circumstances.

The petition is disposed off in the above terms.

A copy of this order be given *dasti* to the parties, under the signature of the Court Master.

DECEMBER 21, 2018/acm


NAIMI WAZIRI, J.