

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 2700 OF 2019

Arvindkumar Jain Dhakad and ors .. Petitioners
Versus
Union of India and ors .. Respondents

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Dr. Sujay Kantawala with Mr.P.D. Jaini I/b P.D. Joshi & Co. for
the petitioners.

Mr. J.B. Mishra for respondent nos.1 and 2.

**CORAM: SHRI RANJIT MORE &
SMT. BHARATI H.DANGRE, JJ.**

DATED : 1st JULY 2019

P.C:-

1 Heard learned counsel for the respective parties.

2 Petition is filed seeking following reliefs.

(a) Issue a writ of prohibition or any other appropriate writ, order or direction to prohibit the officers of respondent no.2 from exercising power of arrest the petitioners, under Section 104 of the Customs Act, 1962, and summoning any of them under Section 108 of the Customs Act, 1962, in F.No. DRI/MZU/E/INT-65/2019, without following the mandatory provisions of the Code of Criminal Procedure, as contained in Section 154 to 157, 167, 172 and other applicable provisions thereof, in absence of any embargo in the Customs Act, 1962 from the application of such provisions of Cr.P.C.

(b) To permit the petitioners to have an Advocate visible, but not audible distance during their interrogation in F.No. DRI/MZU/E/INT-65/2019 by the Officers of DRI in accordance with the direction given by the Hon'ble Supreme Court in Vijay Sajnani Vs. Union of India in Cril. M.P. No.10117 of 2012 in WP (Crl.) 29 of 2012, which may also be directed to be video-graphed in terms of order 7.12.2010 in Writ Petition (Civil) No.389 of 2010 passed by the Hon'ble Supreme Court in Rajinder Arora & Ors. Vs. Union of India & Ors.

(c) At the interim/ad-interim stage, pending final disposal the instant petition, the officers of Respondent No.2 may pleased be restrained from taking any coercive action against the petitioners prejudicing their personal liberty in F.No. DRI/MZU/E/INT-65/2019, and may also be directed to permit the petitioners to have an Advocate at visible, but not audible distance during their interrogation by the Officers of DRI, in accordance with the direction given by the Hon'ble Supreme Court in **Vijay Sajnani Vs. Union of India** in Crl.M.P. 10117 of 2012 in WP(Crl.) 29 of 2012, which may also be directed to be video-graphed in terms of order 7.12.2010 in writ petition (Civil) No.389 of 2010 passed by the Hon'ble Supreme Court in Rajinder Arora & Ors Vs. Union of India & ors, as directed in Cr.W.P. No. 349 of 2018 vide order dated 25.01.2018 (Exh.12) and in Cri.W.P. No. 572 of 2018 vide Order dated 10.04.2018 (Ex.14) and Cri.W.P. No.3104 of 2018 vide order dated 20th July 2018 (Ex.15) and Cri.W.P. 5703 of 2018 order dated 20.12.2018 (Ex.16) and Cri.W.P. No.201 of 2019 Order dated 29/01/2019 (Ex.17)

2 So far as the relief claimed in prayer clauses (a) and (c) is concerned, same is about pre-arrest bail. Mr.Kantawala, learned senior counsel, however having taken instructions from his client, make a statement that he is not pressing the relief claimed in prayer clauses (a) and (c). Statement is accepted.

3 As far as relief claimed in prayer clause (b) is concerned, petitioners are seeking direction similar or to the one issued by the Apex court in *Vijay Sajnani Vs. Union of India* (Criminal M.P.No. 10117 of 2012) and *Rajinder Arora Vs. Union of India and ors* (WP (Cri) 389 of 2010) and permit the petitioner to have an Advocate at visible but not audible distance during their interrogation by the Officers of the DRI.

4 Learned counsel for the DRI vehemently oppose the relief claimed in prayer clause (b). He invited our attention to the decision of the Telangana High Court dated 18th April 2019 in Writ Petition No.4764 of 2019 and connected matters and the subsequent order of the Apex Court dated 29th May 2019, whereunder the Apex Court has refused to interfere in the said decision and thereby upheld the view of the Telangana High Court.

Learned counsel Shri.Mishra for DRI has also relied upon the order dated 29th May 2019 passed by the Apex Court in petition for Special Leave to Appeal (Crl)No. 4322 – 4324 of 2019 in *Union of India Vs. Sapna Jain & ors.*

6 Mr.Kantawala, learned counsel for the petitioners, on the contrary, rely upon the decision of the Apex Court dated 24th February 2012 in Writ Petition (CRL) No.28 of 2012 in ***Birendra Pandey Vs. Union of India*** and submit that petitioner seek limited protection and such protection is already accorded by the Apex Court in the aforesaid order.

We have carefully perused the judgments/orders placed before us. In ***Birendra Kumar Pandey & Anr.(Supra)***, the petitioners were served with notice under Section 108 of the Customs Act, 1961, to appear before the customs authority for interrogation in connection with certain matters and they were apprehensive that coercive attempts may be used to extort confessions from them and therefore, they prayed for the interrogation in presence of lawyer within a visible but beyond hearing distance.

The Apex Court, after making reference to the Three judges Bench in case of ***Poolpandi and Others V/s. Superintendent, Central Excise and Others (1992) 3 SCC 259*** and the subsequent judgment in case of ***Directorate of Revenue Intelligence V/s. Jugal Kishore Samra (2011) 12 SCC 362*** relied on the observations in the later two Bench judgment which had observed thus :-

“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 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.”

Their lordships observed that this Bench and other Benches of this Court had occasion to deal with similar matters and have 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. It is further held that decision rendered in **Poolpandi's** case by a Bench of Three Judges, was in the context of the direct involvement of the learned counsel during actual interrogation where the lawyer assumed an active role during interrogation and on the other hand, what has been sought before the Court was presence of lawyer at a distance beyond hearing range to ensure that no coercive methods were used in the interrogation. The relief that was sought for therefore came to be granted in favour of the petitioners.

7. We have also referred to the judgment of the Telangana High Court wherein the petitioners have challenged the summons issued by the Superintendent (Anti-Evasion) of the Hyderabad GST Commissionerate under Section 70 of the Central Goods and Services Tax Act, 2017. The petitioners claimed protection from arrest and the Telangana High Court dismissed the petition along with connected petitions as it did not find favour with the petitioners and the Telangana High Court after making reference to the scheme of CGST Act, 2017

and the provisions of the Code of Criminal Procedure and specifically as regards Sections 41 and 41-A held that the protection under the said sections may be available to persons who have committed cognizable and non-bailable offences under the CGST Act, 2017, however, it did not grant any relief against the petitioner, in view of the special circumstances, in view of the said judgment.

The decision of the Telangana High Court was confirmed in SLP No.4430 of 2019. The learned counsel of Union of India has also invited our attention to the order passed by the Apex Court in SLP (Cri) No. 4322 – 4324 of 2019 challenging the judgment of Bombay High Court where the protection from arrest came to be granted in favour of the petitioner. The Apex Court observed thus :-

“As the accused-respondents have been granted the privilege of pre-arrest bail by the High Court by the impugned orders, at this stage, we are not inclined to interfere with the same. However, we make it clear that the High Courts while entertaining such request in future, will keep in mind that this Court by order dated 27.05.2019 passed in SLP (Cri.) No.4430/2019 had dismissed the special leave petition filed against the judgment and order of the Telangana High Court in a similar matter, wherein the High Court of Telangana had taken a view contrary to what has been held by the High Court in the present case.

Beyond the above, we do not consider it necessary to observe anything further.”

Thus the orders placed before us pertain to the relief of pre-arrest protection and the Apex Court in its order dated 29.05.2019 had made it clear that the dismissal of appeal against Telangana High Court Judgment should be kept in

mind while considering the request of pre-arrest bail. However, neither of the judgment dealt with the issue which is placed before us for consideration.

8 The Apex Court in Criminal M.P. No. 10117 of 2012 in WP(Crl.) No.29 of 2012 in ***Vijay Sajani & Anr Vs. Union of India*** made the following observations :

“Similar matters have been filed before us earlier and in whose matters, we had directed that during interrogation of the petitioner(s), his/their counsel would be allowed to be present within visible distance, but beyond hearing range. Inasmuch as, the same orders are being passed in these matters, we dispose of the writ petition by directing that in similar cases, in the event the person(s) summoned under Section 108 of the Customs Act, 1962, wish(es) for similar orders, he(they) may apply to the custom authorities concerned and a similar provision may be made for his/their interrogation in the presence of learned counsel as indicated hereinabove.

10 In ***Rajinder Arora Vs. Union of India & Ors*** (Writ Petition (Civil) No.389 of 2010), the Department itself has assured that the recording of the statement and examination of the goods will be video-graphed.

The learned counsel for Union of India has also placed reliance on the Rajasthan High Court judgment in case of ***Bhag Singh V/s. Union of India reported in CDJ 2018 Raj 264***. The said judgment is delivered in light of the facts and circumstances when the apprehension expressed by the petitioner of being subjected to third degree torture of violence was itself found to be unjustified. In any contingency we are bound by the judgment/orders passed by the Hon'ble Apex

Court and in light of the said binding orders, we are inclined to grant relief to the limited extent as prayed by the petitioner in prayer clause (b).

We therefore allow the Writ Petition and direct that the petitioners would be interrogated in presence of an advocate at a visible, but not audible distance in relation to the interrogation in F.No.DRI/MZU/E/INT-65/2019, by the Officers of DRI in accordance with the direction given by the Hon'ble Supreme Court in *Vijay Sajnani Vs. Union of India in Cril. M.P. No.10117 of 2012 in WP (Crl.) 29 of 2012*. We also direct that the proceedings be video-graphed in terms of orders passed by the Hon'ble Supreme Court in case of *Rajinder Arora & Ors. Vs. Union of India & Ors.*

(SMT. BHARATI H. DANGRE, J.)

(RANJIT MORE, J.)