

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M No.6862 of 2019 (O&M)

Date of decision: 15.03.2019

Ram Niwas

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Dr. Anmol Rattan Sidhu, Sr. Advocate
with Mr. Shranav Katyal, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

Mr. Anshuman Chopra, Advocate (Sr. Standing counsel)
for the complainant – Central Borad of Excise and
Customs.

ARVIND SINGH SANGWAN J.

CRM No.7363 of 2019

Prayer in this application is for impleading the applicant
i.e. Commissioner of Customs, Amritsar as respondent No.2.

Heard.

For the reasons stated in the application, the same is
allowed and the Commissioner of Customs, Amritsar is ordered to be
impleaded as respondent No.2.

Amended Memo of Parties (Annexure C1) is taken on
record.

CRM-M No.6862 of 2019 (O&M)

Prayer in this petition filed under Section 438 of the of the

Criminal Procedure Code (in short 'Cr.P.C.') is for grant of anticipatory bail to the petitioner, who is anticipating his arrest in compliance of the non-bailable warrants issued by the Chief Judicial Magistrate, Amritsar in a custom case pertaining to seizure of 27 gold bars at International Check Post (ICP) Attari, Amritsar.

Brief facts of the case as set up in the present petition are that the petitioner is a proprietor of M/s. Universal Solutions situated in 81-Kanganheri, New Delhi-110071 and he has a licence to conduct the business of export and import. It is further stated that the petitioner is conducting the business with various countries like China, Spain, Vietnam, Cyprus, Hong Kong, Tanzania, etc. and is aggrieved against the non-bailable warrants issued by the Chief Judicial Magistrate, Amritsar on an application given by the Customs Officials in connection with seizure of 27 gold bars at International Check Post at Attari, Amritsar on 05.12.2018 at about 06:30 PM as in one of the consignment of apples, which was coming from Kabul, Afghanistan in a shipment, which was to be received by M/s. Universal Solutions, the proprietorship firm of the petitioner.

Learned Senior counsel for the petitioner has submitted that the petitioner is in the business transactions with one Fazli Star Trading Company, Afghanistan through its representative Mr. Abid, who introduced the petitioner to one Harun Atal and the petitioner had imported cotton yarn from them. The aforesaid Harun Atal later introduced the petitioner to one Mohd. Khalid, Vice President of M/s. Amini Sadri Limited and the petitioner imported apples and pomegranates from Afghanistan and accordingly, M/s. Amini Sadri

Limited sent 05 consignments to India on previous occasions and on 05.12.2018 at about 06:30 PM, another consignment of apples when checked by the Customs Officials at International Check Post, Attari, Amritsar, 27 gold bars approximately 33 Kgs. worth Rs.9.41 crores was found in the consignment and it was immediately seized.

Learned Senior counsel for the petitioner has further submitted that the petitioner had no knowledge about the contents of the consignment, which was sealed at Afghanistan and as per the set norms, the goods sent from Afghanistan are received at Attari Border through transit in Pakistan and if the seal is broken, the same are not accepted by the Customs Officials. It is further stated that since the seal was intact, therefore, there was no fault on the part of the petitioner and he was not aware about the contents inside the consignment as he was under bona fide belief that apples and pomegranates are being imported.

Learned Senior counsel for the petitioner has further argued that in pursuance to the interim order dated 14.02.2019, the petitioner had appeared before the Customs Officials at 10:00 AM, however, they started the investigation at 11:00 AM and it continued till next morning upto 06:30 AM i.e. from 21.02.2019 to 22.02.2019. It is further submitted that the petitioner has also filed CRM No.7897 of 2019 seeking permission to rejoin the investigation in presence of an Advocate with the allegations that when the petitioner had appeared before the Customs Authorities on 21.02.2019, he was given beatings as per his MLR (Annexure A1), which was recorded at 09:45 AM after the petitioner was released. Learned Senior counsel for the petitioner

has also submitted that though the petitioner was medico legally examined by the Customs Officer at 06:30 AM in the morning, however, the petitioner could not give the details of the injuries sustained by him and while moving an application for re-examination at 08:20 AM, he has mentioned in the application that in the morning, when Dr. Neha had asked him about any injury, then due to hesitation, in front of a lady doctor, he could not disclose her about the injuries sustained by him on his buttocks. Later on, in the second MLR, 07 injuries were reported by the petitioner, which were in the shape of leisure, bruises on the left glatal region, right buttock, on the lower lumbo region with pain on the wrist joint, knee and chest.

Learned Senior counsel for the petitioner has further argued that the petitioner has already joined the investigation and he is not required for further investigation.

It is worth noticing that the present petition was filed by impleading the State of Punjab as a respondent, however, the application i.e. CRM No.7363 of 2019, was moved by the Customs Authorities for being impleaded them as a party and similarly, another application i.e. CRM No.7368 of 2019 was moved for cancellation/modification of the order dated 14.02.2019 vide which the interim anticipatory bail was granted to the petitioner.

As noticed above, the application i.e. CRM No.7363 of 2019 has already been allowed.

Counsel appearing for the complainant i.e. Customs Authorities, has relied upon various documents to submit that at the first instance, on the confiscation of the consignment, in which 27 gold

bars approximately weighing 33 Kgs. worth Rs.9.41 crores was recovered, the petitioner was served with a notice under Section 108 of the Customs Act to appear before the Commissioner of Customs, Amritsar to explain his position. This notice was given on 10.12.2018 for appearance of the petitioner. Thereafter, another notice was issued on 14.12.2018, 19.12.2018 and 31.12.2018 and when the petitioner failed to respond to the summons issued by the Customs Authorities, ultimately, an application was moved before the Chief Judicial Magistrate, Amritsar under Section 104 of the Customs Act for procuring the presence of the petitioner by way of non-bailable warrants as he was evading the proceedings before the Customs Authorities in pursuance to the summons issued to him.

It is only on this application that the Chief Judicial Magistrate, Amritsar has issued non-bailable warrants against the petitioner and thereafter, the petitioner filed an application for grant of anticipatory bail before the Additional Sessions Judge, Amritsar, which was dismissed vide order dated 31.01.2019 (Annexure P3).

Counsel for the complainant has further submitted that there is sufficient evidence against the petitioner for his arrest. Firstly, the consignment which was to be received by the proprietorship firm of the petitioner i.e. M/s. Universal Solutions, was found to be containing 33 Kgs. of gold bars worth Rs.9.41 crores and thereafter, the petitioner when appeared before the Customs Authorities on 21.02.2019, was given a long questionnaires in which all the incriminating evidence was put to him including the call details, in which the petitioner had admitted many facts (on request of counsel appearing for the

complainant i.e. Customs Authorities, that this may relate to serious security concern and may affect investigation), the same are not being referred, however, I have gone through the questionnaire put to the petitioner in which the telephonic conversation/transcription was put to him and he could not give reply for passing of crores of rupees as per this conversation with one Mohd. Yusuf of Afghanistan. It is submitted on behalf of the complainant that custodial interrogation of the petitioner is required as one Mr. Khalid, Vice President of M/s. Amini Sadri Limited has come to India on 05.12.2018 and left India on 08.12.2018 and this fact was well within the knowledge of the petitioner, however, he never informed the same to the Customs Authorities because as per the document supplied by the petitioner, he was having a dealing with M/s. Amini Sadri Limited and therefore, the petitioner has even tried to conceal the material evidence as this person escaped from the country without the knowledge of the Customs Authorities though he had arrived in India on the same day when gold bars were recovered in the consignment.

Counsel for the complainant has further submitted that even as per the forensic report of the mobile of the petitioner and other evidence on record, the custodial interrogation of the petitioner is required. It has also been submitted that it is well within the powers of the Customs Authorities to arrest a person under Section 104 of the Customs Authorities if sufficient evidence has come on record against a person. It is further submitted that the petitioner by causing self-inflicted injuries has created evidence to avoid arrest.

Counsel for the complainant has relied upon the judgment

passed by the Hon'ble Supreme Court ***“Phoolpandi and others vs Superintendent, Central Excise and others”***, 1992(2) (Criminal) 315, wherein it has been held that *the presence of a Lawyer during the interrogation of a person by the Custom Officer under the Customs Act or under FERA Act is not permissible and if such permission is not granted, the same not in violation of the Section 20(3) of the Constitution of India.*

Counsel for the complainant has further relied upon the judgment passed by this Court ***“Anil Shoor vs Union of India”***, 2002(3) RCR (Criminal) 735, to submit that *where a Custom Officer is summoning a person for enquiry under Section 108 of the Customs Act regarding smuggling of goods, such enquiry is deemed as judicial proceedings within the ambit of Sections 193 and 228 of the Indian Penal Code and the anticipatory bail was declined.*

After hearing the learned counsel for the parties and going through the evidence so collected by the Customs Authorities primarily I am of the considered opinion that evidence worth arrest of the petitioner and his further custodial interrogation has come on record. It could not be disputed by learned Senior counsel appearing for the petitioner that in pursuance to the summons issued to the petitioner under Section 108 of the Customs Act to appear and produce documents, after the consignment carrying gold bars worth Rs.9.41 crores from Afghanistan was seized by the Customs Authorities at International Check Post, Attari, the petitioner evaded his appearance before the Customs Authorities. It is also not disputed that one person namely Mohd. Khalid came from Afghanistan to India on 05.12.2018

and returned back on 08.12.2018 and the petitioner did not inform this fact to the Customs Authorities as they had no knowledge that he is the person, who has sent the consignment because in the records, the petitioner has informed that he has a dealing with M/s. Amini Sadri Limited. It has also come on record from the FSL report and the transcription of the mobile conversation of the petitioner with Mohd. Khalid in Afghanistan about the dealings in crores of rupees, which may raise a serious concern about the national security or hawala transactions. Therefore, I find no ground to grant the relief of anticipatory bail to the petitioner.

Dismissed.

Since the main petition has been dismissed, the pending applications, if any, are also disposed of having been rendered infructuous.

(ARVIND SINGH SANGWAN)
JUDGE

15.03.2019
yakub

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No