IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M No. 36702 of 2018

Date of decision : 15.03.2019

Charanjit Singh

......Petitioner

Versus

State of Punjab and another

...Respondents

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Mr. Sudhir Malhotra, Advocate for the petitioner.
Ms. Bhavna Gupta, DAG, Punjab.
Mr. Sunish Bindlish, Advocate for respondent No.2.

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DAYA CHAUDHARY, J.

The prayer in the present petition is for setting aside the impugned order dated 26.07.2018 (Annexure P-3), passed by learned Additional Sessions Judge, Ludhiana, to the extent of imposing condition to keep an amount of ₹ 3 crores in a fixed deposit in some bank and to undertake to surrender that amount for payment of legally adjudicated demand with the department towards payment of duty and furnishing copy of FDR of ₹ 3 crores to the department as well as trial Court within a period of 15 days.

The petitioner/accused filed petition for anticipatory bail in complaint case under Section 132 and 135 of the Customs Act, 1962, registered at Police Station – DRI. As per allegations in the complaint, the petitioner was one of the Directors of M/s Modern Insecticides Ltd., Ludhiana and his premises was raided on 31.05.2018 and 01.06.2018. Some samples were drawn from the premises of the Company. Petitioner was travelling to Dubai along with his father and he had to come back immediately to India and joined the search operation. He was asked to deposit ₹ 2 crores towards duty liability vide demand draft dated 01.06.2018. Petitioner appeared before the authorities and deposited ₹ 90 lacs on 12.06.2018 and 13.06.2018. He was apprehending arrest, therefore, filed anticipatory bail application.

The application was opposed by the respondent-department and reply was filed. It was mentioned in the reply that the petitioner did not co-operate with the investigating agency as he did not come present in spite of notice served upon him. The material recovered from the premises of the petitioner/accused falls under CTH 3808 having 30.40% customs duty, but it was declared under CTH 2853 or 2707 having 21.58% customs duty. It was also alleged that the duty demand towards the petitioner/accused was ₹ 2,11,51,980/- on account of inadmissible cenvat credit, ₹ 1,34,55,737/- on account of illegitimate refund and excise duty of ₹ 4,38,83,602/-. Out of said amounts, an amount of ₹ 3,05,00,000/- was already deposited. The department seized the finished goods of the value of ₹ 1,06,23,110/- from the premises of the petitioner/accused. It was mentioned in the reply that the application was liable to be dismissed on this ground.

Learned Additional Sessions Judge, Ludhiana, confirmed the bail subject to the condition that as and when the demand is raised by the investigating agency, the petitioner/accused is required to meet with the demand in legal manner and in order to ensure compliance, he would keep an amount of ₹ 3 crores in a fixed deposit in some bank and should undertake to surrender that fixed deposit for payment of the legally adjudicated demand with the department towards payment of duty and he would furnish a copy of the FDR to the department as well as in the trial court within a period of 15 days from the date of passing of the order.

Learned counsel for the petitioner submits that learned Additional Sessions Judge, Ludhiana has allowed the bail subject to the condition to keep an amount of ₹ 3 crores in a fixed deposit in some bank with an undertaking to surrender the fixed deposit for payment of legally adjudicated demand. Learned counsel also submits that the petitioner joined and cooperated in the investigation but by recording a finding that the petitioner did not cooperate in the investigation, a harsh and unreasonable condition has been imposed to deposit said amount. Learned counsel further submits that the condition is outside the purview of Section 438 Cr.P.C. and to put such unreasonable condition, the petitioner would suffer an irreparable loss, whereas the money is required for business purposes. Learned counsel also submits that said condition is contrary to the provisions of Article 21 of the Constitution of India. At the end, learned counsel submits that the petitioner has already deposited some amount and said condition is violative of notification dated 14.11.2002.

Heard arguments of learned counsel for the parties and have also gone through the contents of the FIR and other documents available on record.

On perusal of the order of bail, it reveals that the anticipatory bail has been allowed and made absolute subject to the condition that as and when the demand is raised by the investigating agency, the petitioner is required to meet out with the demand in legal manner and in order to ensure compliance, the petitioner has been ordered to keep an amount of ₹ 3 crores in fixed deposit in some bank. While granting bail, it has been ordered to undertake to surrender the fixed deposit for payment of legally adjudicated demand with the department towards payment of duty. Meaning thereby the petitioner has been directed to keep an amount of ₹3 crores in fixed deposit in his name and to furnish copy of the FDR to the department. It clearly shows that the condition has been imposed to have the FD of said amount in the name of the petitioner.

In the present case the show cause notice was issued to the petitioner as he was found to be evading central excise duty by violating notification dated 14.11.2002 and duty of ₹1,34,55,737/- plus interest of ₹60,07,060/- plus penalty of ₹3 lacs, which was paid by him after he was booked in the case. As per allegations, the petitioner has evaded the duty and has caused great loss to the public exchequer. The offence is grave/serious in nature. While granting bail, it is to be seen by the Court as to whether grant of bail would hamper the investigation. The condition of deposit of said amount in the FD was for granting interim bail which was acceptable to the petitioner and was never objected. The interim bail was made absolute subject to aforesaid condition. However, subsequently, the condition has been challenged by way of filing the present petition. The punishment for offence under Sections 132 and 135 of the Customs Act, 1962 is imprisonment upto a term of 7 years with fine. The offence committed by the petitioner relates to evasion of customs duty and defrauding the government exchequer. It is settled law that economic offence constitute a class apart and such like offence having deep rooted conspiracy by causing huge loss of public funds affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country. At the time of granting bail, the Court has to consider and keep in mind the nature of allegations, severity of punishment, the character of the accused, circumstances which are peculiar to the accused and also the reasonable possibility of securing presence of the accused during trial as well as reasonable apprehension of the witnesses being tampered with. The offences are cognizable and non-bailable and the matter is under investigation. In case the petitioner is released on bail, he may dispose of his properties and thereafter it would be difficult to recover the amount. Petitioner was issued summons for appearance on two different dates but he failed to join investigation. As per input, export remittances amounting to ₹ 19 crores is still pending against him. In his statement dated 12.07.2018, the petitioner has assured to provide the full details of outstanding export remittances within a period of one week but he failed to provide the same. As per notification dated 12.01.2016 (amended upto June 23, 2017), the amount representing the full export value of goods/software/services exported shall be realised within a period of nine months from the date of export. The petitioner has not cooperated in the investigation and just to ensure his availability during ongoing investigation, such condition was imposed.

Moreover, the petitioner has been directed to deposit the amount in the form of fixed deposit in his own name only. Meaning thereby the petitioner would also be entitled for interest. The condition for depositing amount is not unconditional but just to ensure to deposit said amount in case in the investigation he is found to be involved for evasion of the duty. The amount so deposited would be for the purpose of recovery. No financial loss has been caused in any manner to the petitioner as the same has been ordered to deposit by attracting interest.

Accordingly, the present petition being devoid of any merit is hereby dismissed.

15.03.2019 **(DAYA CHAUDHARY)**
sunil yadav **JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No