213 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-36126-2021
Date of decision: 09.09.2021

Sunil Dutt

...Petitioner

Versus

Department of Customs, Customs Commissionerate, Ludhiana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Ankur Ghai, Advocate
for the petitioner.

Mr. Sanjay Bansal, Senior Advocate with
Mr. Amit Parshad, Advocate
Ms. Astha Chetan, Advocate and
Mr. Gurdeep Singh, Advocate
for the respondent-CBIC.

(Through Video Conferencing)

ARVIND SINGH SANGWAN, J. *(Oral)*

This is a petition filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in complaint case, offences under the Customs Act (Section 135, 135-A, 132 and other Sections of Customs Act), pending before the Department of Customs, Customs Commissionerate, Ludhiana.

Brief facts of the case are that the petitioner is a G-Card holder and is doing the job of liaison in movement of the files of his clients before the Customs Department, so as to get clearance of the assessment of custom duty. The petitioner has moved a file for M/s P. S. Traders, Patiala regarding importing of a consignment from Dubai on 08.04.2021. As per the documents attached with the file, the same was cleared, however, the petitioner was not approached by the party regarding payment of the custom duty. Later on, it came to the notice of the petitioner that the importer has managed to remove the consignment from ICD without paying the custom duty. Thereafter, in April, 2021, the Customs Department issued a notice to the petitioner under Section 108 of the Customs Act, 1962 for appearing and giving reply to the notice, however, the petitioner did not appear before the Department concerned as he was apprehending arrest.

Learned counsel for the petitioner has argued that the petitioner was in fact called by Sandeep Kumar, Inspector-ICD CONCOR (Import) to sought the services of the petitioner for a party, which was close to Sandeep Kumar, Inspector-ICD CONCOR (Import) and in that process, by showing aluminium scrap to be imported, certain documents were prepared by Sandeep Kumar, which were submitted before the Customs Department.

Learned counsel for the petitioner further submits that the petitioner was neither approached by the party directly nor he had submitted any documents for the physical examination of the goods.

Learned counsel for the petitioner further submits that in fact on coming to know that instead of aluminium scrap, 39,60,000 cigarettes (100 mm each) of four different brands were imported without paying the custom duty, the petitioner made a representation to the Department and on his complaint, the action was initiated against the erring Custom Officers and therefore, the petitioner has been falsely nominated in this case.

Learned counsel for the petitioner has referred to a communication made by the Principal Commissioner, Central Goods and Services Tax Commissionerate Ludhiana to the Commissioner, Customs Commissionerate, Ludhiana, wherein, with reference to the statement of the petitioner, it is stated that the petitioner on receiving a call from Sandeep, Inspector-ICD CONCOR (Import), has inquired about the importing of aluminium scrap from Dubai and he collected the documents of M/s P. S. Traders, Patiala, but he never proceeded with the file.

In reply, learned Senior counsel for the respondent-CBIC on the basis of affidavit filed by the Commissioner of Customs, Ludhiana has opposed the prayer on the ground that the present petition praying for anticipatory bail at the stage when notice under Section 108 of the Customs Act, 1962 is issued, is not maintainable.

Learned Senior counsel for the respondent-CBIC has referred to the judgment of the Hon'ble Supreme Court in ***Union of India versus Padam Narain Aggarwal and Others in Criminal Appeal No.-1575 of 2008*** decided on 03.10.2008, wherein, in similar circumstances it was held that at the stage of issuance of a notice under Section 108 of the Customs Act, 1962, if bail is granted, it will amount to a blanket bail which is not permissible.

Learned Senior counsel for the respondent-CBIC further argued that Paramjit Singh (Customs House Agent) and some other officials have already been arrested and it has come in their statement that the petitioner was actively involved in conspiracy with them. It is also stated that with the involvement of the petitioner, the State Exchequer has suffered a loss of about 2.98 crores and therefore, the present petition is liable to be dismissed.

After hearing learned counsel for the parties and considering the facts and circumstances of the case, it is apparent that the notice to the petitioner was issued on various dates w.e.f. 12.08.2021 and instead of appearing before the Custom Authorities, the petitioner preferred to present his anticipatory bail application before the Court of Sessions, which was dismissed on 24.08.2021.

In view of the aforesaid judgment of the Hon'ble Supreme Court in ***Union of India versus Padam Narain Aggarwal and Others case (Supra)***, the present petition is not maintainable and is liable to be dismissed.

Even otherwise, there are serious allegations of causing a huge financial loss to the State Exchequer and therefore, even on merits, this petition is liable to be dismissed.

Accordingly, this petition is dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

09.09.2021
Chetan Thakur

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*