

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-13905-2022
Date of decision : 25.05.2022

Jitender Kumar

... Petitioner

Versus

The State of Haryana and another

... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: None for the petitioner.

Mr.Munish Sharma, AAG, Haryana.

VIKAS BAHL, J.(ORAL)

This is a Criminal Miscellaneous Petition under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in the case where summons dated 14.03.2022 have been issued for 21.03.2022 (Annexure P-1) to appear before the Directorate of Revenue Intelligence, Delhi Zonal Unit or in the alternative has prayed that a 7 days advance notice be served upon the petitioner.

On 06.04.2022, none had appeared on behalf of the petitioner despite the fact that the matter had been called twice and the matter was adjourned to 25.04.2022. On 25.04.2022, this Court was pleased to pass the following order:-

*“Learned counsel for the petitioner prays for short adjournment to go through the judgment of the Hon'ble Supreme Court in **Union of India Vs. Padam Narain Aggarwal and others** reported as **(2008) 13 SCC 305**, so as to show how the present petition is maintainable moreso, before this Court without even*

approaching the Sessions Court.

Adjourned to 25.05.2022.

(VIKAS BAHL)
JUDGE

25.04.2022”

The case has been called thrice today but no one has appeared on behalf of the petitioner.

A perusal of the Annexure P-1 would show that summons under Section 10B of the Customs Act, 1962 had been issued against the petitioner with respect to undervaluation in import of mobile/ laptop / computer and their accessories. A further perusal of the same would show that the same had been issued in exercise of powers vested under Section 108 of the Customs Act, 1962 and the petitioner had been directed to appear in person on 21.03.2022 at 10:30AM.

In the present petition, a two fold prayer has been made. The first prayer is for anticipatory bail. The petitioner has not approached the Sessions Court and has directly filed the present petition before this Court and thus, the prayer for anticipatory bail made in the present petition filed directly before this Court is not maintainable. The second prayer made is that a 7 days advance notice be served upon the petitioner. The Hon'ble Supreme Court of India in ***Union of India Vs. Padam Narain Aggarwal and others reported as (2008) 13 SCC 305*** has held as under:-

“2. The present appeal is filed by the Union of India against the judgment and order dated November 30, 2006 passed by the High Court of Judicature for Rajasthan (Jaipur Bench) in S.B. Criminal Misc. Bail Application Nos. 7572 and 7573 of 2006 whereby certain directions have been issued by a Single Judge to the Customs Authorities. The High Court held that since the respondents herein were merely summoned under [Section 108](#) of

the Customs Act, 1962 to give their statements in the inquiry, anticipatory bail applications filed by them were pre-mature and were required to be disposed of. The learned Single Judge, therefore, ordered the respondents to appear before the Customs Authorities in response to the summons. He, however, directed that in case the Customs Authorities find that any non- bailable offence has been committed by the respondents, they shall not be arrested without ten days prior notice.

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Safeguards against abuse of power

36. From the above discussion, it is amply clear that power to arrest a person by a Custom Officer is statutory in character and cannot be interfered with. Such power of arrest can be exercised only in those cases where the Custom Officer has 'reason to believe' that a person has been guilty of an offence punishable under [Sections 132, 133, 135, 135A](#) or 136 of the Act. Thus, the power must be exercised on objective facts of commission of an offence enumerated and the custom officer has reason to believe that a person sought to be arrested has been guilty of commission of such offence. The power to arrest thus is circumscribed by objective considerations and cannot be exercised on whims, caprice or fancy of the officer.

37. The section also obliges the Custom Officer to inform the person arrested of the grounds of arrest as soon as may be. The law requires such person to be produced before a Magistrate without unnecessary delay.

38. The law thus, on the one hand, allows a Custom Officer to exercise power to arrest a person who has committed certain offences, and on the other hand, takes due care to ensure individual freedom and liberty by laying down norms and providing safeguards so that the power of arrest is not abused or misused by the authorities. It is keeping in view these considerations that we have to decide correctness or otherwise of the directions issued by a single Judge of the High Court. 'Blanket' order of bail may amount to or result in an invitation to commit an offence or a passport to carry on criminal activities or to afford a shield against any and all types of illegal operations, which, in our judgment, can never be allowed in a society governed by Rule of Law.

Statements under [Section 108, Customs Act](#) : Evidentiary value

39. As already noted in the earlier part of the judgment, [Sections 107-109](#) confer power on Custom Officers to examine persons, to summon them to give evidence and to produce documents. [Section 108](#) which is a material provision, reads thus;

“108. Power to summon persons to give evidence and produce documents.--(1) Any gazetted officer of customs duly empowered by the Central Government in this behalf, shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making under this Act.

(2) A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under control of the person summoned.

(3) All persons so summoned shall be bound to attend either in person or by an authorized agent as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject, respecting which they are examined or make statements and produce such documents and other things as may be required;

Provided that the exemption under Section 132 of the Code of Civil Procedure, 1908 (5 of 1908), shall be applicable to any requisition for attendance under this section.

(4) Every such inquiry as aforesaid shall be deemed to be a judicial proceeding within the meaning of [section 193](#) and [section 228](#) of the Indian Penal Code (45 of 1860)

This section does not contemplate magisterial intervention. The power is exercised by a Gazetted Officer of the Department. It obliges the person summoned to state truth upon any subject respecting which he is examined. He is not absolved from speaking truth on the ground that such statement is admissible in evidence and could be used against him. The provision thus enables the officer to elicit truth from the person examined. The underlying object of [Section 108](#) is to ensure that the officer questioning the

person gets all the truth concerning the incident.

40. As held by Constitution Bench of this Court in [Ramesh Chandra Mehta v. State of West Bengal](#), (1969) 2 SCR 461, a person called upon to make a statement before the Custom Authorities cannot be said to be an accused of an offence. It is, therefore, clear that if a person is called upon to make a statement under [Section 108](#) of the Act and summon is issued for the said purpose, he is bound to comply with such direction. This view has been reiterated in several cases thereafter.

41. In [CCE v. Duncan Agro Industries Ltd.](#), (2000) 7 SCC 53, this Court stated;

"11. [Section 108](#) of the Customs Act does not contemplate any magisterial intervention. The power under the said section is intended to be exercised by a gazetted officer of the Customs Department. Sub-section (3) enjoins on the person summoned by the officer to state the truth upon any subject respecting which he is examined. He is not excused from speaking the truth on the premise that such statement could be used against him. The said requirement is included in the provision for the purpose of enabling the gazetted officer to elicit the truth from the person interrogated. There is no involvement of the magistrate at that stage. The entire idea behind the provision is that the gazetted officer questioning the person must gather all the truth concerning the episode. If the statement so extracted is untrue its utility for the officer gets lost".

(emphasis supplied)

It is thus clear that statements recorded under [Section 108](#) of the Act are distinct and different from statements recorded by Police Officers during the course of investigation under [the Code](#).

Imposition of condition before effecting arrest

42. The counsel for the Union of India submitted that in spite of settled law on the point, the directions issued by the High Court have made the statutory provisions ineffective, nugatory and meaningless. Even if on the basis of statements of the respondents, the Custom Authorities are satisfied that the respondents had committed non-bailable offence and in exercise of statutory power,

they could be arrested, the directions of the High Court will come in the way of the Authorities and will prevent them from exercising the power of arrest without complying the conditions imposed by the Court. No such condition on the exercise of statutory power could have been imposed by the High Court and since they are not in consonance with law, they are liable to be set aside. The counsel, in this connection, invited our attention to a decision of this Court in [State of Maharashtra v. Mohd. Rashid & Anr.](#), (2005) 7 SCC 56. In that case, the High Court had issued a direction to the effect that if any crime is registered against M in future with a particular Police Station within three years, he shall not be arrested in connection therewith, except after service of four working days' advance notice in writing to him.

43. Describing the order as 'blanket', this Court held that, no such direction could have been issued by the High Court. The order was, therefore, set aside. The Court, however, observed that if a false case is registered against M, he can challenge it in an appropriate forum.

Conditions not lawful

44. In the case on hand, the respondents were only summoned under [Section 108](#) of the Act for recording of their statements. The High Court was conscious and mindful of that fact. It, therefore, held that applications for anticipatory bail, in the circumstances, were pre-mature. They were, accordingly, disposed of by directing the respondents to appear before the Custom Authorities. The Court, however, did not stop there. It stated that even if the Custom Authorities find any non- bailable offence against the applicants (respondents herein), they shall not be arrested "without ten days prior notice to them.

45. In our judgment, on the facts and in the circumstances of the present case, neither of the above directions can be said to be legal, valid or in consonance with law. Firstly, the order passed by the High Court is a blanket one as held by the Constitution Bench of this Court in Gurbaksh Singh and seeks to grant protection to respondents in respect of any non-bailable offence. Secondly, it illegally obstructs, interferes and curtails the authority of Custom Officers from exercising statutory power of arrest a person said to have committed a non-bailable offence by imposing a condition of giving ten days prior notice, a condition not warranted by law. The order passed by the High Court to the extent of directions issued to

the Custom Authorities is, therefore, liable to be set aside and is hereby set aside.

Final order

46. For the foregoing reasons, the appeal filed by the Union of India is partly allowed and the directions issued and conditions imposed by the High Court on the Custom Authorities are hereby set aside.

47. Ordered accordingly.”

The applicants filed anticipatory bail applications which were disposed of by the High Court by observing that they were premature as the applicants had only been summoned under Section 108 of the Customs Act. However, after observing that the bail applications were premature, the learned Single Judge directed the applicants to appear before the Customs Authorities and further directed that in case the authorities find that any non bailable offence has been committed by the applicants therein, then they shall not be arrested without a 10 days prior notice. The said direction with respect to “not to arrest the applicants without 10 days prior notice” was challenged by Union of India and while allowing the appeal of Union of India and setting aside the said direction, the Hon'ble Supreme Court of India had observed that the direction given by the High Court illegally obstructs, interferes and curtails the authority of the Customs Officers from exercising statutory power of arrest of a person said to have committed a non-bailable offence and thus, the direction was set aside.

In view of the law laid down by the Hon'ble Supreme Court in ***Padam Narain Aggarwal's*** case (supra) and also in view of the above said facts, the present petition is accordingly, dismissed.

Nothing stated above shall be construed as an expression of opinion on the merits of the case and the proceedings would proceed

independently of the observations made in the present case which are only
for the purpose of adjudicating the present bail petition.

(VIKAS BAHL)
JUDGE

May 25, 2022
Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No