101

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.42144 of 2021 (O&M)
Date of decision: 29.04.2022

Sunil Dutt

....Petitioner

Versus

Department of Customs, Customs Commissionerate, Ludhiana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. D.S. Sobti, Advocate
for the petitioner.

Mr. Rajesh Sethi, Sr. Standing Counsel
with Mr. Sunish Bindlish, Advocate
Mr. Arun Biriwal, Advocate
and Mr. Tushar Gera, Advocate
for respondent No.1.

Mr. Sourabh Goel, Sr. Standing Counsel, CBIC,
with Mr. Prerna Chandna, Advocate
for respondent No.2.

Mr. Sumeet Goel, Sr. Advocate
with Ms. Shubhra Singh, Advocate
and Mr. Paramveer Dhull, Advocate
for the respondent – CBI.

ARVIND SINGH SANGWAN J. (Oral)

In pursuance of the order dated 13.10.2021, on the last date, learned senior counsel for the CBI, has submitted a report in a sealed cover.

As per the status report filed, one preliminary PE No.PE052021A0003 dated 16.11.2021 stands registered and thereafter, the investigation was carried out, the details of which is given in the report.

As per the report, the department has already constituted a Special Investigating Team and 02 officers have been arrested, therefore, this Court find that there is no further scope for enquiry by the CBI.

The report be kept in a sealed cover.

In the order dated 13.10.2021, already an objection has been taken that second anticipatory bail is not maintainable. The operative part of the order dated 13.10.2021, reads as under:-

> *"The new ground set up by the petitioner in this 2nd petition is two fold: (a) The petitioner is a registered informer of General Goods and Service Tax, Commissionerate (GST) i.e. respondent No.2 and has helped in unearthing many scams and GST Evasion for which he has been granted award. (b) The petitioner is enrolled as a G – Card Holder by the Department of Customs on behalf of M/s. Safe Cargo Clearing Services and being a G – Card Holder, the petitioner is assisting in moving the files of the parties in the Department of Customs for handling the custom clearances and has also obtained a KYC Form, Import-Export Code, PAN Card, Aadhar Card, etc. from Prabhjot Singh.*
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> *Counsel for the petitioner has argued that the petitioner has initially given the information to GST Department regarding a consignment which was illegally cleared by the Customs Department without making any entry and the same was intercepted by Preventive Wing of CGST Commissionerate, Ludhiana and it was found that the shipping line seal of the container was intact and not broken which suggested that the Customs Authorities never checked the consignment. When the consignment was checked by the Preventive Wing of CGST Commissionerate, Ludhiana, it was found containing*

39,60,000 Cigarettes (100 mm each) of four different brands, 10030 Kgs of iron scrap and 04 alloy wheels. Counsel for the petitioner has further submitted that the petitioner was apprehensive that since he has unearthed a scam, he may fell to the ire of the Customs Department as the Custom Official, who was the Port Incharge, when the consignment was allowed to move out of the Port without making any entry, is now made the Head of the Special Investigative Team and therefore, the petitioner has every apprehension that he will not get the justice.

This petition is filed by arraying 02 respondents i.e. Department of Customs, Customs Commissionerate, Ludhiana – respondent No.1 and Anti-Evasion Unit, Central Goods & Service Tax, Commissionerate, Ludhiana – respondent No.2.

It is worth noticing that on the first date of hearing, Mr. Amanjit Singh, Joint Commissioner, Central GST Commissionerate, Ludhiana, has sent a Secret Note in a sealed cover stating that the petitioner – Sunil Dutt was the secret informer/source from whose information, the consignment was confiscated by the Central GST, Ludhiana, leading to recovery of aforesaid articles. It is further stated that the information provided by the petitioner was duly recorded in writing under the Anti-Evasion – 1 Report (AE-I) dated 08.04.2021 and an entry was made at Serial No.13 of AE-1 Register maintained with the Headquarter of Preventive Branch of Central GST, Commissionerate, Ludhiana and a Code CXL-40 was allocated to the informer/source. It is also stated in this Secret Note that a secret letter dated 17.09.2021 was sent to the Commissionerate of Customs, Customs Commissionerate, Ludhiana regarding the information/source which was given by the petitioner being G-Card Holder of M/s. Safe Cargo.

The said Secret Note is taken on record as 'Mark – A'.

Reply by way of affidavit of Mr. Vrindaba Gohil, Commissioner of Customs, Commissionerate, Ludhiana, along with the synopsis, filed in the Court is also taken on record.

On merits, it is stated that the second anticipatory bail application is not maintainable as the earlier one was dismissed on merits. Reliance is also placed on an order of the Hon'ble Supreme Court passed in ***SLP (Criminal) No.213 of 2021 titled as "G.R. Ananda Babu vs State of Tamil Nadu and another",*** *wherein the Hon'ble Supreme Court has observed that the successive anticipatory application ought not to be entertained especially when the accused is absconding and not co-operating with the investigation and special reasons for change of circumstances cannot be invoked once it is rejected by speaking order that too by the same Bench.*

Learned senior counsel appearing for respondent No.1 has argued that on 09.04.2021, the consignment of prohibited goods was released/cleared manually in an illegal manner by Rambir Singh Gahlaut (Superintendent) and Sandeep Kumar (Inspector) of Customs Department while hand-in-glove with the importer Prabhjot Singh, G-Card Holder that the petitioner – Sunil Dutt and Paramjit Singh, a conduit facilitating the import of goods on behalf of the importer without payment of custom duty. It is further stated that later on, when the Preventive wing of CGST Commissionerate, Ludhiana, intercepted the consignment and opened the seal and the same were found to be carrying prohibited goods worth Rs.3 crores approximately. Later on, on 12.04.2021, a statement was tendered before the CGST Authorities, wherein the petitioner stated that he is not aware of the actual goods *contained in the container and there is no reference of the petitioner being an informer of CGST, Ludhiana. Learned senior counsel for respondent No.1 has also submitted that on 19.04.2021, the Principal Commissionerate, CGST, Ludhiana, passed information regarding interception of the goods in violation of the Central Goods and Services Tax, 2017 and seizing of Cigarettes during e-way bill inspection. In this letter also, there is no communication regarding the status of the petitioner being an Informer of the CGST Commissionerate, Ludhiana.*

It is further submitted that as per the Intelligence Report (attached with the reply), it was gathered that Prabhjot Singh, Proprietor of M/s. P.S. Traders, is transporting/selling copper scrap vide Container No.TLXU2005983 and the goods will be declared as Aluminium Scrap but there will be either no e-way bill or a fraudulent e-way bill stating goods as aluminium. Learned senior counsel for respondent No.1 has then referred to the statement of Sunil Dutt (petitioner herein) wherein he has pleaded ignorance about the actual goods contained in the aforesaid container.

Learned senior counsel for respondent No.1 has also submitted that on 09.06.2021, the Chief Commissioner, Customs Preventive Zone, New Delhi, directed the Commissioner Customs, Ludhiana to initiate action under the Customs Act, 1962 in respect of the consignment found with smuggled goods and on 31.08.2021, Paramjit Singh and Sandeep Kumar were arrested under Section 104 of the Customs Act and are in custody.

It is further submitted that on 01.09.2021, Rambir Singh Gahlaut was also arrested and summons were issued to the petitioner – Sunil Dutt under Section 108 of the Customs Act, for recording the statement, however, the *petitioner – Sunil Dutt, filed the first anticipatory bail application, which was dismissed and thereafter, on 29.09.2021, a complaint is filed under Sections 174 and 175 of the Indian Penal Code, 1860, before the Chief Judicial Magistrate, Ludhiana, to procure the presence of the petitioner.*

Learned senior counsel for respondent No.1 has also submitted that till date, no bailable warrants have been issued against the petitioner as he has only been given a notice under Section 104 of the Customs Act to appear and thereafter, another notice has been issued under Section 108 of the Customs Act and in the complaint filed before the Chief Judicial Magistrate, Ludhiana, no arrest warrants has been issued, so far. It is, thus, submitted that the present petition be dismissed.

In sharp contrast to the arguments raised by learned senior counsel for respondent No.1, learned counsel appearing for Anti-Evasion, Central Goods & Service Tax, Commissionerate, Ludhiana i.e. respondent No.2 has argued that in the statement of the Incharge of the goods and conveyance i.e. one Krishan Mohan, who was the driver of vehicle bearing registration No.PB03-AZ-0618 (i.e. above container No.TLXU2005983) has declared that the same is containing Aluminium Scrap valuing Rs.9,44,166/-. It is further submitted that in the physical verification and inspection of the conveyance goods and documents, it was found that no e-way bill was tendered for the goods in the movement and prima facie the documents were found to be defective and even the information was having discrepancies regarding the goods in the transit.

Counsel for respondent No.2 has further submitted that later on, an e-way bill was generated on 09.04.2021 at 04:56 PM, declaring the goods to be Aluminium Scrap *and thereafter, as per the physical verification report dated 11.04.2021, conducted by the CGST Commissionerate, Ludhiana, though, it was declared under the column description of goods as Aluminium Scrap at Serial No.1, 2 and 3 but on verification at Serial No.1, it was found to be Aluminium Scrap of 10030 Kgs and at Serial No.2 instead of Aluminium Scrap, it was found to be containing 39,60,000/- Cigarettes and at Serial No.3, 04 Alloy Wheels.*

Counsel for respondent No.2 has further argued that again, the information was sent to the Customs Department. The operative part of the communication dated 12.04.2021, reads as under:-

> *"5. Investigation in the matter further revealed that the said consignment was imported by M/s P S Traders, Shop no.20/100, Turi Bazar, Near Anardana Chowk, Patiala vide Bill of Entry number 3479461 dated 08.04.2021, Bill of Lading No.TALDXB02657074 through M/s. Safe Cargo Clearing Services (CHA No.ACSFS5510KCH001) from ICD CONCOR, Dhandari Kalan, Ludhiana. On verifying details of the Bill of Entry from ICEGATE, it was found that the consignment covered by the Bill of Entry was shown as pending payment of duty and out of charge from Customs. It is also pertinent to mention here that seal bearing No.284951 was found intact when the container was opened for examination by the Anti Evasion Branch. This is a serious breach of security, established norms for operations at a Customs ICD, which needs to be looked at with a haircomb for a new modus operandi.* ***Such movement without duty payment and out of charge in EDI systems could***

not have taken place without active connivance of Customs officer and the custodian*."*

Counsel for respondent No.2 has submitted that again on 15.04.2021, an information was sent to the Customs Department and again on 15.04.2021, by way of a confidential e-mail, it was requested that the matter may kindly be taken up with the jurisdictional Customs Commissionerate, Ludhiana, to ascertain the fact of case and to conduct further enquiry by the Commissionerate.

After hearing the learned counsel for the parties, this Court finds that it is very strange and surprising that 02 Departments i.e. Department of Customs, Customs Commissionerate, Ludhiana – respondent No.1 and Anti-Evasion Unit, Central Goods & Service Tax, Commissionerate, Ludhiana – respondent No.2, are fighting tooth and nail regarding fixing the liability as to how the consignment was cleared manually without making any entry by the Customs Department and as per stand of the Customs Department, there is a collusion of the official of the CGST Department with the petitioner and the other accused and in that process, the CGST Department is posing the petitioner as a Secret Informer/Source and has even filed a Secret Note under the signatures of Joint Commissioner, Central GST Commissionerate, Ludhiana, giving a clean chit to the petitioner – Sunil Dutt.

Though the officers of Customs Department as well as the CGST Department, derives their powers from the respective Customs Act, 1962 and the Central Goods and Services Act, 2017 and both Departments are part of premium investigating agencies, however, instead of fighting and levelling allegations against each other, the office of the Director General of both the Departments, should have intervened and settled the dispute. Therefore, *taking note of the tardy, casual and irresponsible attitude of both the departments, I find it to be a fit case where the matter needs to be referred to the Central Bureau of Investigation (CBI) for conducting further investigation of the case and fix liability of the erring official(s).*

Ordered accordingly.

Mr. Sumeet Goel, Sr. Advocate (Senior Standing Counsel), who is present in the Court along with Mr. A.K. Ranolia, Advocate, accepts notice on behalf of the Central Bureau of Investigation.

It is directed that an Officer not below the rank of Superintendent of Police will conduct a preliminary enquiry and submit a report within a period of 30 days from today.

The petitioner as well as respondents No.1 and 2 are directed to hand over all the respective documents to the enquiry officer.

A copy of this order be sent to the Director General of Customs as well as the Director General of CGST, with a direction to ensure that all co-operation is provided to the Investigating Officer/CBI.

List again on 13.12.2021."

The first application of the petitioner, seeking anticipatory bail was dismissed by this Court vide order dated 09.09.2021, by passing a detailed order, which reads as follows:-

"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."

Counsel appearing for the respondents are *ad idem* that the petitioner despite being issued summons is not appearing.

In view of the above, considering the fact that there is no change of circumstances and it is the case of the department that the petitioner is not putting appearance, the second petition is ***dismissed***.

(ARVIND SINGH SANGWAN)
JUDGE

29.04.2022
yakub

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No