

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 943 OF 2023

Amit Kumar Sharma
Aged about 36 years,
Flat No. 1802, B-Wing, Sai Miracle
Plot No.16, 17 & 19, Sector-35E,
Kharghar, District Raigad-410210

... Petitioners

Versus

1. Directorate of Revenue Intelligence
Through the Senior Intelligence Officer
NSU-II, MZU, 208,209,215, 2nd Floor,
D-Wing, M/s. Navi Mumbai SEZ Commercial
Complex, Dronagiri, Raigad-400707
2. Union of India,
Through its Advocates,
Dedicated Legal Cell (Customs),
New Customs House
Ballard Estate, Mumbai-400 001
3. The State of Maharashtra

... Respondents

Ms. Priyanka Lokhande a/w Divya Rai i/by Enact Legal for
the Petitioner.

Mr.Advait Sethana a/w Ms.Ruju Thakkar, Mr.Rangan Majumdar,
Ms.Prerna Thakkar, Ms.Poushali Roychoudhary for Respondent No.1.
Mrs. P.P. Shinde, APP for the Respondent-State.

**CORAM : REVATI MOHITE DERE &
SHARMILA U. DESHMUKH, JJ.**

DATE : APRIL 28, 2023

ORDER - (Per : Sharmila U. Deshmukh, J.):

1. Rule. Rule made returnable forthwith with the consent of the parties and taken up for final disposal.

2. By this petition, the Petitioner seeks direction to the Respondent No.1-Directorate of Revenue Intelligence (DRI) and its officers to permit the presence of his Advocate during the interrogation and recording of statements at visible but not audible distance in accordance with the general direction given by the Apex Court in the case of **Vijay Sajnani vs. Union of India and Ors. [Crl.M.P. No.10117 of 2012 in WP (Crl.) No.29 of 2012]** and direction to the Respondent No.1 to permit the Petitioner to record his voluntary statement in his own handwriting.

3. Heard Ms. Priyanka Lokhande, learned counsel for the petitioner. Mr. Advait Sethana, learned counsel for the Respondent No.1 and Mr. V.B. Konde-Deshmukh, learned APP for the respondent-State.

4. Learned counsel appearing for the petitioner submits that on 7th September, 2022, the examination of the goods imported by the petitioner's firm was carried out by the Respondent No.1 and his statement was recorded; that summons dated 7th September, 2022 was issued to the Petitioner under Section 108 of the Act requiring his

presence on 8th September, 2022 for inquiry; that on 9th September, 2022 the premises of the Petitioner's firm was searched and documents seized. She submits that on 19th September, 2022, the Petitioner on his volition appeared alongwith his Advocate and attempted to serve in person the copy of the judgment dated 25th April, 2012 in Vijay Sajnani & Anr. Vs. Union of India & Anr., however the Respondent officer refused to allow the presence of the advocate during the recording of the statement; that on 23rd September, 2022, when the Petitioner and his partner went to the office of Respondent No.1, the officer of the Respondent No.1 misbehaved with them. She submits that after receipt of summons dated 2nd November, 2022 and 4th November, 2022, communications were addressed to the Respondent No.1 requesting to permit the presence of the advocate during the recording of the statement in accordance with the decision of the Apex Court in the case of **Vijay Sajnani (supra)**. However there was no response to the communications. She would further submit that on 27th December, 2022, the officers of the Respondent No.1 visited the office of the Petitioner and took him to their office at 12:30 p.m. and the Petitioner was made to sit there till 7:30 a.m. on 28th December, 2022 and that their statements were taken forcefully and they were coerced to write on the summons that they do not need advocate's presence for their statement. She would further submit that similar treatment was given to the Petitioner on 10th January, 2023 and 17th January, 2023. She submits

that on account of the aforesaid conduct, there is reasonable apprehension that the Petitioner would be coerced to give self-incriminating statements as per the dictates of the Respondent No 1 and contrary to the facts.

5. Per contra, learned counsel appearing for the Respondent No.1 submits that the presence of the Advocate during the interrogation cannot be demanded as a matter of right. He would further submit that the Apex Court in the case of **Poolpandi and Ors. vs. Superintendent, Central Excise and Ors.** in **Criminal Appeal No.301 and 302 of 1987**, has held that the presence of a lawyer cannot be allowed at the time of examination of person under the Customs Act. He relies upon the following decisions:

- (a) **Poolpandi and Ors. vs. Superintendent, Central Excise and Ors.** [MANU/SC/0339/1992];
- (b) **Sudhir Kumar Aggarwal vs. Director General of GST Intelligence** [MANU/DE/3757/2019];
- (c) **Sandeep Jain vs. Additional Director DRI (Directorate of Revenue Intelligence) and Anr.** [in Review Petition No.387/2019 in W.P.(C) 9561/2019, delivered by High Court of Delhi on 10th December, 2019];
- (d) **Amit Joshi vs. Commissioner of Cest & Sr, Cgst (East) & Anr.** [in W.P.(CRL) 766 of 2020 & CRL.M.A. 5730 of 2020 D/d on 20.3.2020];
- (e) **Saurabh Mittal vs. Union of India, Department of Revenue & Ors.** [in CRL.M.C. 644 of 2022, D/d. 11.02.2022];

- (f) **Pawan Kumar vs. Union of India and Ors.** [MANU/UP/0629/2017];
- (g) **Enforcement Directorate vs. Partha Chatterjee** [MANU/WB/1092/2022];
- (h) **Bhag Singh vs. Union of India and Anr.** [in Civil Writ Petition Nos.11173, 11174, 11175, 11176 and 11177 of 2018, D/d. 8.6.2018];
- (i) **Vigin Verghese s/o. Shri K.V. Verghese vs. Union of India and Anr.** [in Criminal Writ Petition No.580 of 2023, delivered by this Court on 3rd March, 2023];
- (j) **Kalpesh Ghevarchand Jain vs. Union of India and Ors.** [in Writ Petition No.782 of 2023, delivered by this Court on 23 March, 2023].

6. Vide various judicial pronouncements of the Apex Court as well as this Court, the presence of the Advocate at visible but not audible distance has been permitted during the interrogation under Section 108 of the Act. Recently, a co-ordinate Bench of this Court in the case of **Kalpesh Ghevarchand Jain vs. Union of India and Ors.** in Writ Petition No.782 of 2023, decided on 23rd March, 2023, has permitted the presence of the advocate during the interrogation at visible but not audible distance. The Co-ordinate Bench of this Court while permitting the presence of the lawyers has taken into consideration the orders passed in Writ Petition No.4322 of 2022, Writ Petition No. 3679 of 2022 and Writ Petition No.2470 of 2022 permitting presence of lawyers at visible but not audible distance.

7. As far as the decisions relied upon by the learned counsel for the Respondent No.2 is concerned, the decision in the case of **Poolpandi** (supra), was distinguished by the Apex Court in the case of **Birendra Kumar Pandey vs. Union of India** (Cri. Writ Petition No. 28/2012). The Apex Court held that the decision rendered in the case of **Poolpandi** (supra), was in the context of the direct involvement of the learned counsel during the actual interrogation where the lawyer assumed an active role during the interrogation. As regards the decisions in the case of **Sandeep Jain vs Additional Director DRI** (supra), **Amit Joshi** (supra), **Pawan Kumar** (supra) and **Bhag Singh** (supra), the Delhi High Court, Allahabad High Court and Rajasthan High Court followed the decision rendered in the case of **Poolpandi** (supra) and has not permitted the presence of the Advocate. In the case of **Saurabh Mittal** (supra), the Delhi High Court held that the relief regarding the presence of lawyer at visible but not audible distance is to be granted sparingly, in exceptional circumstances, where it appears *prima facie* that the apprehension of the person is sincere and bonafide. The Calcutta High Court in the case of **Enforcement Directorate vs Partha Chatterjee** (supra), followed the decision of the Delhi High Court in the case of Directorate of Enforcement vs Satyendra Kumar Jain (CRL.M.C 2869/2022 and CRL.M.A 11846/2022) and held that the allegation against the E.D. that the Advocate of the accused was not allowed to be present at the time of raid is found to be false and the

order permitting the presence of lawyer was set aside.

8. The decisions of the other High Courts have taken a view that the presence of lawyer cannot be insisted as a matter of right. However, the decisions have a persuasive value and is not binding upon this Court. We are respectfully bound by the decision of the Apex Court in the case of **Vijay Sajnani vs. Union of India & Ors.** and **Birendra Kumar Pandey vs. Union of India** as well as the decision of Coordinate Benches of this Court which have permitted the presence of a lawyer at visible but not audible distance. As indicated above the decision in the case of **Poolpandi** (supra) was distinguished on facts by the Apex Court in the case of **Birendra Kumar Pandey** (supra). This Court in the case of **Mayur Chavda s/o Deepakbhai Chavda vs State of Maharashtra (Criminal Writ Petition (St) No.6697 of 2023); and Kamlesh Kumar Mishra s/o Brijabhooshan Mishra vs. State of Maharashtra (Criminal Writ Petition No. 1313 of 2023)** has permitted the presence of lawyers at visible but not audible distance during recording of the statements under Section 70 of Maharashtra Goods and Service Tax Act, 2017.

9. In our opinion, the direction which has been sought by the Petitioner as regards the presence of the lawyer at visible but not audible distance is an aspect of fair investigation and we do not find any reason to take a different view from the view taken by the Coordinate Benches of this Court.

10. Considering the above, writ petition succeeds. The presence of the Petitioner's advocate during the interrogation of the Petitioner is permitted at visible but not audible distance. We do not deem it appropriate to permit the Petitioner to record his voluntary statement in his own handwriting. However, we make it clear that it is for the Petitioner to ensure the presence of their lawyer, whenever the Petitioner is called for interrogation and the non-availability of the lawyer cannot be a ground to seek exemption from the interrogation as and when called.

11. Rule is made absolute in the above terms.

12. Writ Petition is disposed of accordingly.

13. All concerned to act on the authenticated copy of this order.

SHARMILA U. DESHMUKH, J.

REVATI MOHITE DERE, J.