



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: 04.08.2023
Judgment pronounced on: 08.08.2023

+ **BAIL APPLN. 2538/2023 & CRL.M.(BAIL) 1065/2023**

MR. HIMANSHU MONGIA Petitioner

versus

DIRECTORATE OF REVENUE INTELLIGENCE
..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. N. Hariharan, Senior Advocate with Mr. Sumer Singh Boparai, Mr. Sidharth Yadav, Mr. Sidhant Saraswat, Mr. Suyash Goverdhan, Mr. Akshay Jain, Mr. Sharian Mukherjee and Mr. Mueed Shah, Advocates.

For the Respondent : Mr. Satish Aggarwala, Senior Standing Counsel with Mr. Shagan Vaswani, Advocate, SIO Abhishek Gaur and IO Tarun Sharma.

CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J.

[The proceeding has been conducted through Hybrid mode]

1. This is an application under Section 438 Cr.P.C., 1973 filed by the applicant seeking anticipatory bail in file No.DRI-HQ-CI/C50D/INT/13/2022 being investigated by the respondent-Directorate



of Revenue Intelligence (for Short “DRI”).

2. The case of the prosecution is that the applicant was running dummy entities through untrained and random individuals. It is alleged that one such entity was M/s. Green Globe Enterprises, which imported three consignments in the month of December 2022. The same were intercepted by the DRI on allegations of evasion of duty and based thereon the case was instituted.

3. Mr. N. Hariharan, learned senior counsel appearing for the applicant submits that it is a matter of record that the applicant is not a Director/Partner/Key Managerial person/employee of the said entity. He further submits that the actual partners of the said entity, one Sh. Mukesh and Sh. Rajbeer, in their statements have categorically mentioned that the said entity was incorporated on the instructions of one Manjeet and not the applicant.

4. Learned senior counsel also submits that the entire case is on documentary evidence, the same already being in possession and custody of DRI, there is no purpose in seeking custodial interrogation of the application by the DRI.

5. Mr. Hariharan learned senior counsel submits that the applicant in the present case is seeking anticipatory bail apprehending arrest at the hands of DRI. Learned senior counsel submits that the contention of the DRI that it is merely summoning the application under Section 108 of Customs Act, 1962 (for short “the Act”) is a misnomer since the DRI has already made up its mind to arrest the applicant.

6. To support the aforesaid submissions, learned senior counsel



draws attention of this Court to the notices issued under Section 108 of the Customs Act issued by the DRI, whereby the applicant has been directed to appear in an inquiry in connection with “*investigation in respect of imported goods by M/s Green Globe*”. According to learned senior counsel the use of the word “*investigation*” stands in contradistinction to the word “*inquiry*” inasmuch as the investigation is a stage where the agency could, if so required, arrest any person who appears to it to be culpable in any of the cognizable offences. In other words, learned senior counsel submits that the apprehension of arrest as contemplated under Section 438 Cr.P.C, 1973 is present and real and established simply by the issuance of notices for the purposes of “*investigation*”.

7. That apart, learned senior counsel also invites attention of this Court to the reply filed by the DRI particularly to para 8 sub-para (iii) to submit that the allegation contained in the sub para themselves point out to the fact that the DRI has already come to a conclusion that the applicant is the main person who is operating the said entity viz. M/s. Green Globe Enterprises and has utilized Sh. Mukesh Chand and Sh. Rajbeer as dummy Directors. Learned senior counsel also points out that according to investigations carried out, the said Sh. Mukesh Chand is a Painter by profession and Sh. Rajbeer is an employed person, both having absolutely no knowledge regarding import and export and are persons of meagre means according to their statement. From this, learned counsel submits that the apprehension of the applicant that the DRI has not only completed its investigation but also has apparently and allegedly come to a conclusion that the applicant has not only a role to



play in the said offences but also the main person on whose behest the said offences have taken place, though behind the scenes and in disguise by the present applicant.

8. To the same effect, learned senior counsel refers to paragraphs 11, 12 and 14 of the said reply to find support of the submission that the apprehension of arrest is clear and present. Learned senior counsel relies upon the judgment of *Vishesh Jain vs. Department of Revenue Intelligence* reported in *2021 SCC OnLine Del 2533*, *Union of India vs. Padam Narain Aggarwal and Ors.* reported in *(2008) 13 SCC 305* and *Gurbaksh Singh Sibbia and Ors vs. State of Punjab* reported in *(1980) 2 SCC 565*, to submit that an applicant must show that he has “reasons to believe” that he may be arrested and that the said belief ought to be founded on reasonable grounds only if there is something tangible to go by to construe that the same is genuine. According to learned senior counsel, the allegations now disclosed by the respondent in its reply are reasonable grounds leading the applicant to have a “reason to believe” that he may be arrested.

9. Learned senior counsel submits that the Coordinate Bench of this Court in *Vishesh Jain (supra)* had enlarged the applicant therein on anticipatory bail in similar circumstances. On the basis of the aforesaid submissions and the judgments relied upon, learned senior counsel submits that the applicant shall make himself available for investigations at any time the DRI requires upon issuance of any such notices and the applicant be enlarged on anticipatory bail.

10. Moreover, learned senior counsel submits that the applicant has



his roots well entrenched in the society, is a permanent resident of Delhi and is a family man and will not be a flight risk at all. He further submits that having regard to the fact that the allegations are in respect of an economic offence for which the evidences are primarily being in form of documents, no purpose even otherwise would be served in directing the applicant to be remanded to custodial interrogation.

11. *Per contra*, Mr. Aggarwala, learned Senior Standing Counsel for the respondent/DRI submits that this is a fit case, where this Court ought to dismiss the said anticipatory bail application with heavy costs. At the outset, learned senior standing counsel submits that the applicant was asked to appear before the Senior Intelligence Officer (for short “SIO”) competent authority for the purpose of recording voluntary statement under Section 108 of Customs Act, 1962, for which 5 summons dated 18.04.2023, 25.04.2023 23.06.2023 30.06.2023 and 27.07.2023 were issued to the applicant. Despite such issuance of summons, the applicant had not appeared even on one occasion and has been evading the inquiry on one pretext or the other. According to learned senior standing counsel, in fact, with respect to the summons dated 23.06.2023, the applicant had sent an e-mail dated 04.07.2023 and a letter dated 03.07.2023 that he would appear on 12.07.2023 without fail. He submits that despite his own undertaking, the applicant never appeared before the SIO.

12. Learned senior standing counsel also referred to the reply particularly to page 37 which contained the e-mail dated 04.07.2023 to substantiate his submissions. Learned standing counsel submits that the conduct of the applicant does not entitle the applicant for any indulgence



for releasing/enlarging on anticipatory bail at all.

13. Learned counsel relies upon the judgment of Hon'ble Supreme Court in *State of Gujarat Etc. vs. Choodamani Parmeshwaran Iyer and Anr. Etc.* in SLP CrI. No. 4212-4213 of 2019 *vide* the order dated 17.07.2023 to submit that in the said case, the Hon'ble Supreme Court while dealing with sections similar to Section 108 of the Act, held that at the stage of summons, the person summoned cannot invoke Section 438 of Cr.P.C, 1973. Moreover, learned senior standing counsel submits that in the present case, the officers of DRI, cannot arrest any person unless the written approval of the Commissioner (Additional Director General, DRI) is obtained and till such time, the apprehension of the applicant that he would be arrested is a pure figment of his imagination. As a matter of fact, learned senior standing counsel submits that as on today there is no such sanction sought from the competent authority by the DRI qua the applicant since inquiry qua the applicant has not even commenced. To support the aforesaid submissions, learned counsel relies upon the judgment of Coordinate bench of this Court in case of *Manjodh Singh Cheema vs. Director of Revenue Intelligence* dated 06.04.2021 in Bail Application No. 1149/2021 wherein the aforesaid aspect of a mandatory sanction in written from the Commissioner (Additional Director General, DRI) has to be necessarily obtained before any such arrest is effected was taken note of. Since in that case, no such sanction was obtained as on that date, the anticipatory bail application was held to be premature and disposed of accordingly.

14. Learned senior standing counsel submits that the present reply, supported by an affidavit of the officer of the rank of Deputy Director,



DRI, discloses that there is neither any proposal nor any application seeking approval or a sanction of the competent authority has been submitted to the Competent Authority for the purposes of arresting the applicant.

15. So far as the judgment of *Gurbaksh Singh Sibbia (supra)* is concerned, learned senior standing counsel relies upon paragraphs explaining how the words, “reason to believe”, ought to be construed in respect of application under Section 438 Cr.P.C. According to learned counsel, the provision of anticipatory bail is a device to secure individual’s liberty however, the same is not a passport for the commission of crime nor a shield against any or all kinds of accusation, likely or unlikely.

16. Thus, according to learned senior standing counsel the facts, the conduct of the applicant as also the judgments relied upon would sufficiently disentitle the applicant from seeking anticipatory bail.

17. This Court has heard the arguments of Mr. Hariharan learned Senior Counsel appearing for the applicant as also Mr. Satish Aggarwala, learned Senior Standing Counsel for the respondent and have also taken into consideration the reply and judgements filed on behalf of DRI.

18. At the outset, this Court has observed that learned senior counsel as also the learned senior standing counsel for DRI have argued on merits of the matter while arguing the anticipatory bail. However, since the submissions have been made, this Court is constrained to consider some of the salient aspects.



19. At the first instance, Mr. Hariharan had submitted that the DRI has already made up its mind to arrest the applicant which according to him is apparent from the words “*investigations*” employed in the notice under Section 108 of the Act. Learned senior counsel has emphasized that the word “*investigations*” would reflect that the DRI has already crossed the stage of inquiry and has proceeded to the stage of conducting investigation. Learned senior counsel projected that the use of the word “*investigation*” would seemingly imply that the DRI may arrest the applicant on the day when the applicant offers himself for the purposes of inquiry as contemplated under Section 108 of the Act.

20. This submission of learned senior counsel appears untenable to this Court, particularly keeping in mind the conduct of the applicant, in that, despite issuance of at least five previous summons, the applicant did not attend even on one occasion. That apart, despite having assured the DRI that he would appear on 12.07.2023 without fail, the applicant did not do so. Having regard to the fact that the applicant had never appeared before the SIO, even once, to give his voluntary statement, as contemplated under Section 108 of the Act, it is not within the authority of the applicant to contend that there is any real apprehension that the applicant would be arrested. In other words, this Court is of the considered opinion that there is no rationale or material basis to conclude that there could be any such apprehension, particularly when the applicant had not even appeared before DRI to give any statement even once. Attributing apprehension to such unfounded and baseless and imaginative projections, is not only untenable in law but impermissible.

21. The non appearance of the applicant even once before the DRI,



disentitles the applicant from urging any such apprehension, which apparently, is without any basis.

22. Moreover, this Court has also considered the contents of the summons just to satisfy itself, however, the word investigation is pre qualified with the words “*inquiry*” which should be sufficient to come to a conclusion that as on those dates, it was a mere summon issued by the DRI and nothing more. Thus, this submission of the learned senior counsel is untenable in law.

23. The other leg of the argument of the learned senior counsel is with respect to the apprehension, arising from the contents of the reply filed by the DRI and supported by an officer of the rank of Deputy Director. According to learned senior counsel, the contents of the reply, unequivocally points out towards the investigations/inquiry conducted by the DRI till that date and unerringly allege grave and serious infractions against the applicant. According to learned senior counsel, the contents convey as if the DRI has already concluded that the applicant is the master mind of the alleged transactions and offences.

24. This Court is unable to appreciate the aforesaid submissions. The contents of the reply, at best, could be what one can plainly construe as what the inquiry uptill that date have revealed. The applicant not having participated in the inquiry as contemplated under Section 108 of the Act cannot be heard to say that on the one hand he will not appear, and on the other use the same to his advantage to say that the inquiry uptil that date prejudices his stand and therefore, is a clear pointer to the apprehension of arrest.



25. Apart from the above, it is clear from the reply supported by an affidavit of Deputy Director of DRI that as per the statute, no arrest of any person against whom an inquiry is being held can be effected till the appropriate sanction is obtained from the Commissioner/Additional Director General, DRI. In fact, not only the reply, but also the submission of Mr. Aggarwal, learned senior standing counsel is categorical to the effect that there neither is any such proposal nor any sanction for arrest, applied for, till date *qua* the applicant. In other words, the submission of the DRI appears to be that the applicant is being summoned only for the purposes of inquiry for the purposes of voluntary statement as contemplated under Section 108 of the Act and nothing more. At the cost of repetition this Court is constrained to observe that the applicant never offered himself for submitting his voluntary statement despite five such summons having been issued and the applicant having assured to appear on 12.07.2023 had also resiled from his undertaking. Thus, the submissions on this aspect too are untenable and are rejected.

26. Learned senior counsel strenuously argued the aforesaid point and sought to impress this Court that there are “reasons to believe” that the applicant apprehends arrest. For that purpose learned senior relies upon the judgments of Hon’ble Supreme Court in ***Padam Narain(supra)*** and ***Gurbaksh Singh (Supra)*** and ***Vishesh Jain (Supra)*** of Delhi High Court to submit that the words “reasons to believe” has to be gathered from the facts arising in a particular case. According to learned senior counsel, the contents of the reply itself establish that the applicant had cogent and grounded “reasons to believe” that he would be, in all



likelihood, be arrested in case he appears before DRI.

27. This Court has considered all the aforesaid judgments relied on, on behalf of the applicant and so far as judgment of *Vishesh Jain (Supra)* is concerned, on facts there is a distinction that in that case the applicant therein had infact participated previously in inquiry upon summons being issued to him in that regard. That is not so in the present case, and therefore the said judgment is not applicable. So far as the judgment of Supreme Court in *Padam Narain (supra)* and *Gurbaksh Singh (Supra)* is concerned there is no quarrel on the preposition laid down by the Supreme Court on the words “reasons to believe”. However, in the present case, as observed aforesaid there are no cogent or plausible “reasons to believe” of being arrested and thus the judgments would not be applicable to the facts of the present case. That, coupled with the non appearance before DRI even once, settles the issue against the applicant.

28. Moreover, the aforesaid, apprehension or “reasons to believe” are belied by the fact that the DRI, as of now, has neither any proposal nor has applied for sanction for the arrest of the applicant. That apart, this Court is also of the considered opinion that unless the applicant appears before the DRI and offers himself for tendering voluntary statement or otherwise, there cannot be any question of any real time apprehension of being arrested.

29. The view of this Court taken above, finds support from the judgment of the Hon’ble Supreme Court in *State of Gujarat vs. Choodamani (Supra)* as also the judgment of Coordinate Bench of this



Court in *Manjodh Singh Cheema (Supra)*.

30. In view of the aforesaid, this Court is of the considered opinion that there is no merit in the application seeking anticipatory bail.

31. Needless to observe that any observation made herein shall not tantamount to any expression on merits of the case.

32. Accordingly, the bail application stands dismissed.

TUSHAR RAO GEDELA, J.

AUGUST 8, 2023

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