



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

Reserved on : 20.04.2023

Pronounced on : 01.06.2023

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BAIL APPLN. 3012/2022

NAMAN KULTHIA

..... Petitioner

Through: Mr. Manish Pratap Singh, Ms. Mukeshwani Shukla, Mr. Navneet Panwar, Mr. Ajay Singh, Ms. Suhani Kundra, and Mr. Ajay Kumar Rai, Advocates.

versus

DIRECTORATE OF REVENUE INTELLIGENCE Respondent

Through: Mr. Satish Aggarwala, Sr. Standing Counsel for DRI

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

1. The present petition has been filed by the petitioner under Section 438 Cr.P.C. seeking anticipatory bail in the case File No. DRI/BZU/S-IV/ENQ-19/INT-NIL/2022 under Sections 132/135(1)(a)/135(1)(b) of the Customs Act 1962 registered at Police Station DRI, Delhi Zonal Unit.

2. It is submitted by learned counsel for the petitioner that the summons dated 22.08.2022 and 12.09.2022 were issued to the petitioner, asking him to join inquiry/ investigation only on the basis of the disclosure statement made by the accused person, namely, Sanjeev Verma who was arrested on



22.08.2022 by the respondent/DRI. It is further submitted that the said Sanjeev Verma was granted bail on 15.09.2022 by the trial court. It is further submitted that after receiving the summons, the petitioner approached the trial court and filed the application under Section 438, Cr.P.C., seeking anticipatory bail, which was subsequently dismissed vide order dated 28.09.2022. It is further submitted by him that the entire case of the prosecution is based on the statement made by the accused, Sanjeev Verma, who is already on bail.

3. On the other hand, it is submitted by learned senior standing counsel for the respondent/DRI while vehemently opposing the contention of learned counsel for the petitioner that the present bail application is pre-mature. It is further submitted by him that the powers under Section 104 of the Customs Act, 1962 is statutory in nature which can only be exercised on behalf of the Department under the order of the Principle Commissioner or the Commissioner of Customs, solely in those circumstances when he has reason to believe that any person in India has committed an offence punishable under Sections 132, 133, 135, 135A or Section 136 of the Customs Act, 1962. It is further submitted that for affecting arrest of anybody for offences punishable under the Customs Act, 1962, a written approval of the competent authority i.e., Commissioner of Customs/Principal/Additional Director, DRI is required which has not been obtained till date in the present case. Thus, the application for anticipatory bail itself is pre-mature and hence, not maintainable.



4. Learned counsel for the DRI has placed his reliance on the order dated 06.04.2021 passed by the co-ordinate Bench of this Court in Bail Appln. 1149/2021 to contend that the present bail application is pre-mature.

5. In the instant case, a bare perusal of the reply filed by the DRI/respondent shows that the ingredients of Section 438 Cr.P.C. are not attracted. As far as the contention of learned counsel for the petitioner that two summons were issued to the petitioner dated 22.08.2022 and 12.09.2022, as an accused is concerned, I have perused the same and in my opinion, summons have been issued only for the inquiry purposes as a witness and not as an accused.

6. During the course of the arguments, learned counsel for the respondent/DRI has drawn the attention of this Court to the order dated 06.04.2021 passed by the co-ordinate Bench of this Court in Bail Appln. 1149/2021. The relevant portion of the same reads as follows:-

“However, it is essential to observe that vide the status report dated 05.04.2021 and which in reply to a specific Court query the DRI has submitted has been signed by Mr. Aman Kumar, Intelligence Officer, DRI, vide para 5 thereof, it has been submitted as under:

“5.For affecting arrest of anybody for offences punishable under Section 135 of the Customs Act, 1962, written approval of the Commissioner (Additional Director General, DRI) is required. So far, there is not even such proposal, what to speak of approval of the Commissioner /Additional Director General, DRI. Thus, the application for anticipatory bail itself is premature and thus, is not maintainable.”

It has been submitted on behalf of the DRI that DRI reiterates the said contention as put forth in para 5 adverted to hereinabove to the effect that the application for anticipatory bail is presently premature in as much as no approval has so far been sought from the Commissioner (Additional Director General, DRI) for any effective arrest of the applicant for an offence punishable under Section 135 of the Customs Act, 1962.

It has been submitted on behalf of the applicant thus that in the event of any notice being issued by the DRI, the applicant undertakes to join the proceedings.



In view of the submissions made on behalf of either side and the specific averments in para 5 of the status report dated 05.04.2021 submitted on behalf of the DRI, it is apparent that the present application seeking grant of anticipatory bail is premature and is disposed of accordingly.”

7. Therefore, keeping in view the totality of the facts, submissions made and the reply filed by learned senior standing counsel for the respondent/DRI and also relying on the order dated 06.04.2021 passed by the co-ordinate Bench of this Court, I am of the view that the present bail application is pre mature and, accordingly, dismissed as not maintainable.

RAJNISH BHATNAGAR, J

JUNE 1, 2023/p