Crl.O.P.No.5095 of 2024

C.V.KARTHIKEYAN, J.

The petitioner had been issued with notice under Section 108 of the Customs Act in O.S.No.12/2024-INT(AIR) & O.S.No. 157 /2024 -AIU by the respondent, Superintendent of Customs, R&I (Air), New Custom House, Meenambakkam, Chennai.

2. It is stated that the respondent had intercepted a passenger on 05.2.2024 who had been subsequently remanded to custody on 06.02.2024. He was found to be wearing an expensive foreign watch. Another watch was found in his luggage. Enquiry commenced. The respondent issued notice under Section 108 of the Customs Act, 1962 to the petitioner herein. At that juncture, the petitioner had filed the present application seeking anticipatory bail.

3. The learned Senior Counsel appearing for the petitioner proclaimed innocence of the petitioner by stating that after this Court had

directed that the petitioner should appear before the respondent and that no coercive action should be taken, the petitioner did appear before the respondent on 11.03.2024, 12.03.2024 and 16.03.2024. The learned Senior Counsel stated that the petitioner had been questioned from midafternoon till early dawn the next day and that the process went on continuously three days.

4. It is the contention of the learned Senior Counsel that the petitioner had co-operated during the course of investigation. It was also pointed out that simultaneously, a search team had gone over the residence of the petitioner at Hyderabad even prior to the issuance of the notice under Section 108 of the Customs Act. They had gone there on 24.02.2024. The petitioner was not available but he had permitted search of the premises. It is the contention of the learned Senior Counsel for the petitioner that three invoices alone were found relating to watches. They were seizures of mobile phones and other articles, which, the learned Senior Counsel brushed aside as irrelevant. It is thereafter contended that after the petitioner had appeared and again appeared before the

respondent, he had suffered much physical discomfort and ended up with back pain and though he should appear again today, he had issued a written communication expressing his inability.

5. The learned Senior Counsel then pointed out the provisions under Section 135 of the Customs Act 1962.

6. Section 135(a) deals with mis-declaration of value and it is claimed that there was no evasion of duty by the petitioner.

7. Section 135(b) deals with possession of goods liable to be confiscated and it is claimed that there has been no possession by this petitioner.

8. Section 137(c) deals with attempt to export goods liable to confiscation and it is claimed that this is not an allegation against this petitioner.

9. Section 135(d) deals with availing fraudulent duty draw back and it is again claimed that this is not alleged against the petitioner.

10. Section 135(e) deals with obtaining an instrument fraudulently an it is again claimed that this is also not alleged against the petitioner.

11. It was pointed out that these offences would draw a maximum punishment of seven years and none of them are alleged against the petitioner.

12. The learned Senior Counsel therefore insisted that this Court should grant anticipatory bail for the petitioner particularly taking into consideration the fact that he had answered the notices issued under Section 108 of the Customs Act and had also co-operated by disclosing all necessary information as sought by the respondent. It is also stated that the petitioner is also prepared to file an affidavit to vouch for the correctness of the aforementioned statements.

13. The learned Special Public Prosecutor however pointed out documents which had been gathered during the course of enquiry. They are extracts from the mobile phone which had been seized from the possession of the petitioner herein. It is the contention of the learned Special Public Prosecutor that proper procedure was adopted including obtaining a certificate under Section 65-B of the Indian Evidence Act, 1872. That particular certificate had also been annexed along with the documents filed.

14. It is stated by the learned Special Public Prosecutor that the petitioner had given statements after being confronted with the extracts from his mobile phone. A cursory reading was made of those extracts which indicate about the financial dealings with watches made by the petitioner. Each watch was worth nearly about Rs.1/- crore. There were transactions from 2021 onwards. The names of five individuals have also been disclosed but it is contended that the addresses of those persons have not been disclosed by the petitioner. The messages exchanged with various individuals about cash transactions and sales of

watches were also found in the extracts from the mobile phone. The method by which the watches are to be exchanged by showing a specific note Rs.10/- note with specific number was also pointed out by the learned Special Public Prosecutor. The conversions in whatsapp were also extracted and it is contended that they reveal that the petitioner was directly involved in the purchase and sale of high end watches unlawfully and illegally and without declaring the same to the authorities. It is stated that transactions were done in cash. A glance of the records would reveal about that 100 watches were dealt with, which would indicate that the amount involved is more than Rs.100/- crores.

15. The learned Special Public Prosecutor also pointed out the names of the other individuals which had cropped up during the course of enquiry. It is contended that further enquiry with the petitioner is required to gather details a bout the named individuals. It is contended that the petitioner had refused to divulge those details. It is therefore argued that interrogation has to be done, as otherwise further investigation will get stalled and the entire process would get scuttled.

16. The learned Special Public Prosecutor placed reliance on the Judgment of the Hon'ble Supreme Court reported in ***AIR 2009 SC 254 [Union of India Vs. Padam Narain Aggarwal and others]*** wherein the Hon'ble Supreme Court had examined the powers of a customs officer to arrest an individual and also the manner in which investigation and enquiry should be done. It had been held that grant of anticipatory bail would defeat the purpose of further enquiry or investigation into offences which could be termed as economic and corruption which strike at the soul of the economy of the country.

17. It is thus clear that substantial materials had been gathered but they are not sufficient. Specific details have been withheld by the petitioner. The proclaim of innocence of the petitioner can be accepted only with a pinch of salt. At this stage, grant of any relief would directly affect the ongoing investigation. There is every possibility of the petitioner destroying evidence and warning others who are involved in the offence. They may flee away from the country.

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18. The petition seeking anticipatory bail has to suffer an order of dismissal.

19. Very specifically protection granted is withdrawn. The petitioner should abide by the notices and summons issued by the respondent under Section 108 of the Customs Act, 1962. This Petition stands dismissed.

18.03.2024

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