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

+ **BAIL APPLN. 3851/2025 & CRL.M.A. 30035/2025**

RAKESH MISHRA

.....Applicant

Through: Mr. Aditya Dhawan, Ms. Kiran Dhawan, Mr. Saurabh Duggal, Mr. Anirudh Negi and Mr. Ranjan Kumar, Advs.

versus

CUSTOMS

.....Respondent

Through: Ms. Anushree Narain, Senior Standing Counsel with Mr. Naman Chawla, Adv.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

09.10.2025

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1. The present application is filed seeking pre-arrest bail in File No. VIII(SB) 10/ CusPrev/ Gr-1A/ Cig-Icon/ 04/ 2024-25, registered by the respondent investigating agency, for offences under Sections 135(1)(a)/ 135(1)(b)/ 135(1) (i)(A) of the Customs Act, 1962.

2. Briefly stated, on the basis of specific information in relation to huge quantity of foreign origin cigarettes without pictorial warning or MRP having been kept at a godown/ office of the applicant's firm, the concerned premises was searched and a lot of plastic bags were found kept in the hall. A recovery of 12,00,000 foreign origin cigarettes, valued at ₹2,40,00,000/-, was effected from the premises. It is alleged that the cigarettes bore



no pictorial warnings in violation of the provisions of the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regular Trade and Commerce Protection, Supply and Distribution) Act, 2003 and allied rules. As per the prosecution, the employees of the applicant disclosed that he was the main person directing the activities.

3. The learned counsel for the applicant submits that the applicant has been wrongly implicated in the present case and he was not named in the secret information.

4. He submits that the applicant was in Kolkata at the relevant time and there is no material to show that the applicant had prior knowledge of the goods in question, which were received from a walking customer who had arranged for the delivery of the consignment at the premises of the applicant's firm.

5. He submits that the statements of the applicant's employees was given in custody and the same cannot be relied upon without corroboration. He further submits that there is no photography or videography to support the recovery.

6. He further submits that the employees of the applicant, who were arrested in the present case and were present on the spot at the time of recovery, have already been granted bail.

7. I have heard the counsel and perused the record

8. It is settled law that the power to grant a pre-arrest bail is extraordinary in nature and is to be exercised sparingly, especially in cases of economic offences as the same stand as a different class as they affect the economic fabric of society [Ref. ***P. Chidambaram v. Directorate of Enforcement : 2019 SCC OnLine SC 1143***]. The Hon'ble Apex Court, in the case of ***State***



of **A.P. v. Bimal Krishna Kundu : (1997) 8 SCC 104**, held as under:

“8. A three-Judge Bench of this Court has stated in Pokar Ram v. State of Rajasthan [(1985) 2 SCC 597 : 1985 SCC (Cri) 297 : AIR 1985 SC 969] : (SCC p. 600, para 5)

“5. Relevant considerations governing the court's decision in granting anticipatory bail under Section 438 are materially different from those when an application for bail by a person who is arrested in the course of investigation as also by a person who is convicted and his appeal is pending before the higher court and bail is sought during the pendency of the appeal.”

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12. We are strongly of the opinion that this is not a case for exercising the discretion under Section 438 in favour of granting anticipatory bail to the respondents. It is disquieting that implications of arming the respondents, when they are pitted against this sort of allegations involving well-orchestrated conspiracy, with a pre-arrest bail order, though subject to some conditions, have not been taken into account by the learned Single Judge. We have absolutely no doubt that if the respondents are equipped with such an order before they are interrogated by the police it would greatly harm the investigation and would impede the prospects of unearthing all the ramifications involved in the conspiracy. Public interest also would suffer as a consequence. Having apprised himself of the nature and seriousness of the criminal conspiracy and the adverse impact of it on “the career of millions of students”, learned Single Judge should not have persuaded himself to exercise the discretion which Parliament had very thoughtfully conferred on the Sessions Judges and the High Courts through Section 438 of the Code, by favouring the respondents with such a pre-arrest bail order.”

9. The present case pertains to serious allegations of smuggling of huge quantity of foreign branded cigarettes, which were not carrying appropriate pictorial warning.

10. Although it is argued that the applicant was not present at the premises at the time of recovery of the goods and he had no knowledge about the contents of the consignment, the reply filed by the investigating agency before the Trial Court reflects that



certain chats of the applicant with co-accused Gabbar (the applicant's employee) have been found which indicate that the applicant used to deal in foreign origin cigarettes. Moreover, the employees of the applicant have made categorical disclosures stating that the applicant is the main person directing the activities.

11. While the admissibility of the disclosures and if such disclosures were made voluntarily cannot be ascertained at this stage, the said statements cannot be discarded in light of the chats found between the applicant and co-accused and it cannot be ignored that the recovery was effected from a premises which was under the applicant's control. *Prima facie*, the said factors create doubt against the applicant.

12. Insofar as the argument in relation to the applicant's employees having been granted regular bail is concerned, it is pertinent to note that the considerations governing the grant of pre-arrest bail are materially different than those to be considered while adjudicating application for grant of regular bail, as in the latter case, the accused is already under arrest and substantial investigation is carried out by the investigating agency. Moreover, a bare perusal of the bail order of the applicant's employees reflect that the learned Trial Court was heavily weighed by the factor of the said persons being low-level employees.

13. The investigation is still at a nascent stage. It is settled law that the custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 482 of the BNSS [Ref. ***State v. Anil Sharma : (1997) 7 SCC 187***]. Grant of pre-arrest bail would



undoubtedly impede the prospects of unearthing the entire chain of individuals involved in the commission of the offence. An order of bail cannot be granted in a routine manner so as to allow the applicant to use the same as a shield.

14. The record reflects that the applicant's bail before the learned Trial Court was opposed due to him not cooperating with the investigation. Certain WhatsApp chats have been placed on record by the applicant which also indicate that the applicant has been repeatedly requesting for postponement of the date to the next month to comply with the summons, after which, he had sent his representative to request for further time. The texts by the IO reflect that despite summons being sent as per the request of the applicant, he had still not appeared in person.

15. Considering the allegations against the applicant, it cannot be held at this stage that the investigation is being carried out with the intention to injure or humiliate the applicant. *Prima facie*, the facts do not indicate false implication of the applicant.

16. The present application is accordingly dismissed.

17. It is clarified that any observations made in the present order are only for the purpose of deciding the present bail application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

AMIT MAHAJAN, J

OCTOBER 9, 2025/ 'KDK'