

## **Directorate Of Revenue Intelligence vs Attarpal Singh on 28 July, 1998**

**Equivalent citations: 1998VAD(DELHI)119, 74(1998)DLT543, 1998(103)ELT483(DEL)**

**Author: J.B. Goel**

**Bench: J.B. Goel**

ORDER

J.B. Goel, J.

1. By this revision the petitioner, Directorate of Revenue Intelligence (DRI) challenged the legality and propriety of and seeks setting aside of the order dated 11.6.1998 passed by learned Addl. Sessions Judge (A.S.J.) whereby the respondent-accused has been admitted to bail for an offence under 135(1)(b) of the Customs Act (the 'Act').

2. The facts alleged in brief are that the officers of DRI, Delhi on 2.5.1998 recovered/seized smuggled ball bearings (a) worth Rs. 39,15,200/- from in front of go down-cum-residence of one Tej Vir Singh, located at Gali No. 3, R-Block, Vikas Nagar (2) worth Rs. 46,00,065/- from a godown located at 496, Parmanand Colony and (3) worth Rs. 57,53,900/- from a godown situated at 18, Yograj Colony, Delhi i.e. in all totalling to Rs. 1,42,69,165/-. The respondent and one Dhiraj Singh in their statements alleged to have been made voluntarily under Section 108 of the Act admitted the aforesaid recovery and seizure and some facts of their concern with the seized smuggled goods. Inderjeet Singh, Intezar Ahmed, Joginder Singh and some others in their alleged voluntary statements made under Section 108 of the Act had also named the respondent and said Dhiraj Singh to be concerned with the said seized smuggled goods.

3. The respondent and Dhiraj Singh were arrested on 2.5.1998. His application for bail was rejected by the learned A.C.M.M. on 26.5.1998.

4. He moved another application before Sessions Court and on 9.6.98 the learned A.S.J. ordered issue of notice to the respondent for 16.6.1998. The respondent filed another application for early hearing which came before another learned A.S.J. on 10.6.1998, who after notice to the respondent pre-pined the hearing of the application for bail to 11.6.1998, heard the matter and granted bail to the respondent on 11.6.1998 after hearing the parties.

5. The grievance made by the petitioner is that the bail application was contested and on facts inter

alia on the grounds that the respondent was the main person responsible for this illegal import; the matter was under investigation and case law was also referred to; a similar case of Amarjit Singh where the value of the smuggled goods was only Rs. 33,62,000/- and in that case accused was in custody since 30.3.1998 which on the same day was declined earlier was also cited but the learned A.S.J. acted in unjustifiable haste and has acted in abuse of judicial discretion applying different standards in not dis-similar situations and in these circumstances the action is likely to shake the confidence of the public at large in the judiciary. Thus, while challenging the legality and propriety of the impugned order the allegations of impropriety have also been imputed to the learned A.S.J.

6. I have heard learned counsel for the parties.

7. Learned counsel for the petitioner has supported the averments made in this petition and has referred to the relevant material available on record; whereas learned counsel for the respondent has refuted these allegations of impropriety and supported the validity and legality of the impugned order. He has inter alia urged that the counsel of the respondent (Shri Gurbux Singh) was the counsel who was to argue the matter before the learned A.S.J.; the date for hearing the bail application was adjourned to 16.6.1998 in his absence on 9.6.1998 and when he came to know about it he immediately asked his junior counsel for pre-pining the date as he had to go to Jammu on 15.6.1998 for which he had a confirmed seat in the train, it was in these circumstances that an application for pre-pining the date was made on 10.6.1998 and on that learned A.S.J. had proponed the hearing of that application to 11.6.1998 after prior notice to the petitioner and there is no impropriety or arbitrariness in so doing. The allegations are unwarranted and improper in these circumstances.

8. Learned counsel for the respondent has also produced a railway ticket No. 80524410 (PNR NO. 221-5397945) in train No. 2403 leaving Delhi on 15.6.1998 at 22.30 hours in respect of four adult passengers.

9. The parties have not placed on record the copy of application filed on 9.6.1998 for pre-pining of date from 16.6.1998. However, in para 10 of the reply filed by the respondent to the present revision petition it is pleaded as under :-

"That in reply to para 10 of the petition it is submitted that the counsel of the respondent was go to his hometown on 13.6.98 and was to come back only on 15.6.98 for his further travel, therefore, there was no occasion for him to attend the court even on 15.6.98 in normal circumstances, and thus the date was prayed for either 11.6.98 or 12.6.98. It is further submitted that in case the petitioner had any objection, they would have raised the same at the appropriate stage."

10. But no affidavit in support of this has been filed. This averment has been denied in rejoinder dated 9.7.1998 filed by the petitioner.

11. Admittedly, the petitioner was arrested on 2.5.1998 and ball bearings apparently smuggled worth Rs. 1,42,69,165/- were recovered from three places; statements of respondent and some other

persons were recorded under Section 108 of the Act showing involvement of the respondent. The learned A.C.M.M. vide his order dated 26.5.1998 has rejected the bail application for the reasons given by him as under :

"I have heard arguments and perused the record. It is submitted by Ld. defense counsel that the ball bearings are not notified goods and, therefore, are not covered under the restrictions of provisions of Section 123 of the Customs Act. It is also submitted that the applicant Attarpal has already retracted his statement U/s 108 of the Customs Act, which was obtained from him under duress, coercion, and, therefore, the statement cannot be relied upon. It is further submitted that the initial burden lies on the department to establish that the ball bearings were not covered under the mischief of Chapter IVA of Section 123 of the Customs Act. The accused has admitted his concern with the seized smuggled ball bearings worth Rs. 39,15,200/-. The enquiries are on and are at infancy. No doubt the ball bearings are not covered by Section 123 of the Customs Act and are as such not notified under Chapter IVA of the Act but economic offences are to be dealt with seriously. Crimes professionally committed by deceptively respectable members of this new criminal tribe is rapidly escalating and form a deterrent exemption to human softness."

12. The learned A.S.J. in his order dated 11.6.1998 granting bail has observed as under :-

"Heard. The Ld. counsel for the respondent has submitted that in this case the ball bearings worth Rs. 1.42 crores were smuggled from foreign country. It is further stated that the investigation is still incomplete and is at initial stage and that the petitioner is not entitled to be admitted to bail.

The ld.counsel for the petitioner has submitted that the ball bearing is not notified goods and the same is not covered under the restriction of provisions U/s 123 of the Customs Act. The Ld. counsel for the respondent during the course of arguments also very fairly conceded that the ball bearings are not notified goods and is not covered under the restriction of provisions of Section 123 of the Customs Act. The petitioner has also attached the copy of the order of the Ld. ACMM, wherein it was also observed that the ball bearings are not the notified goods u/s 123 of the Customs Act. In the said order it has also been recorded that the petitioner was concerned with the smuggled ball bearings worth Rs. 39,15,200/-. The petitioner is in judicial custody since 2.5.1998.

Considering the facts and circumstances of the case and the petitioner is in J/C since 2.5.1998 and also because the ball bearings are not the notified goods under the restrictions provided u/s 123 of the Customs Act, the petitioner is admitted to bail on his furnishing personal bond in the sum of Rs. one lakh with one surety of the like amount to the satisfaction of the court concerned and subject to the condition that the petitioner shall not tamper with the evidence in any manner and he shall also not leave the country without the permission of the court and he shall also surrender his

passport (if he possesses the same) before the I.O. within one week from today."

13. Two reasons have been given (1) the accused being in custody since 2.5.1998 and (2) the goods being not covered under Section 123 of the Act.

14. It appears that another similar application of Amarjeet Singh who is alleged to have smuggled identical goods i.e. ball bearings worth Rs. 36,15,200/- was also heard but dismissed by the said learned A.S.J. on the same date observing as under :-

"Judicial file received. Heard. It is stated that the petitioner is in judicial custody since 30.3.1998 and that now the investigation is complete and complaint has already been filed. It has been stated that the first bail application was rejected by the Court of Shri M.A. Khan, learned ASJ on 13.5.1998. Thereafter, the petitioner filed an application in the Hon'ble High Court of Delhi which was withdrawn by the petitioner. The Ld. counsel for the respondent submits that the petitioner has not withdrawn the bail application in the High Court as the High Court was not inclined to grant the bail to the petitioner. Considering the facts and nature of the offence against the petitioner and also that earlier the bail application of the petitioner was rejected I do not think it a fit case to grant bail. The application is rejected. The Judicial file be sent back."

15. Apparently same standard has not been applied in two cases involving similar goods and rather the case of Amarjeet Singh where the bail was declined was on a better footing inasmuch as (1) he was in custody since 30.3.1998 as against the custody of the present respondent being since 2.5.1998; (2) the value of smuggled goods in that case was only Rs. 33,62,000/- as against the value in the present case being Rs. 1,42,69,165/- or as noticed in the order of Rs. 39,15,200/-; (3) investigation was completed and complaint for prosecution had already been filed in the case of Amarjeet Singh where as in the present case it was urged by the Department that investigation was still incomplete and was at initial stage.

16. On facts the case of the respondent was on much lower footing than that of Amarjeet Singh where bail was rejected.

17. One of the ground for granting bail in the present case was that ball bearings are not notified goods under Section 123 of the Act. But that does not lessen the severity of offence or sentence that could be imposed. It only has the effect of shifting of the burden of proof of the guilt in case of a person found in possession of smuggled goods of two different types and second ground is that he was in custody since 2.5.1998. These grounds did not weigh against Amarjeet Singh, who was guilty of similar violation and was in custody since 30.3.1998 i.e. from 34 days earlier

18. This difference in treatment of two persons in these circumstances differently, more favourable to one who is not better placed than the other is bound give rise to suspicion of unjustifiable favourable treatment to that person and consequently in the bonafides of the action of court. This is not likely to command credit to the administration of justice, is not proper and needs to be avoided.

19. On the parity of two cases only the impugned order may not be proper. However, the question is whether the impugned order should be set aside? The effect in that case would be cancellation of the bail and re-arrest of the respondent. Will it be proper and in the interest of justice to do so at this stage?

20. The petitioner remained in custody from 2.5.1998 to 11.6.1998, by now the investigation is complete and perhaps a complaint for his prosecution has already been filed in the court.

21. Grant of bail is discretionary though discretion is to be exercised on sound judicial principles and not arbitrarily and capriciously and the High Court would be justified in interfering in revision if the discretion was exercised capriciously or arbitrarily. However, there cannot be uniformity in the matter of exercise of discretion in such matters. The respondent has produced a copy of an order dated 30.4.1997 passed by this Court in Crl. M.(M) No. 1206/97 Sanjeev Arora Vs. DRI where the accused was admitted to bail for an offence punishable under Section 135 of the Act after detention of only 55 days and on the other hand in Crl. M. (M) 2215/97 in case of import of contraband gold worth Rs. 22,29,392/- the request for bail was declined on September 9, 1997 by a learned Judge of this Court observing that "Economic offences are eating into the sinews of our society. It is time we take serious note of such economic offences." Learned counsel for the respondent has also produced a copy of order dated 27.9.1994 passed by learned A.C.M.M. in Enforcement Vs. Brij Kishore Datashu where bail was granted because of "no objection" on behalf of the department.

22. There are no allegations that presence of the respondent would not be secured at the trial nor apprehension of witnesses being tampered with. The respondent had remained in custody for over 70 days. A person cannot be detained in custody for an indefinite period especially when trial takes long time.

23. In these circumstances, no useful purpose will be served in setting aside the order. The supervisory power of this court no doubt could be exercised to prevent misuse of the process, however the circumstances do not justify this power being exercised in cancelling the bail.

24. With these observations this revision petition is dismissed.