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**Vijay Kumar Vs. Customs**

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**SooperKanoon Citation** : sooperkanoon.com/685937

**Court** : Delhi

**Decided On :** Mar-07-2001

**Reported in** : 2001IIIAD(Delhi)755; 2001CriLJ2266; 90(2001)DLT522; 2001(58)DRJ164; 2003(90)ECC881; 2002(144)ELT43(Del)

**Judge** : Mr. R.C. Chopra, J.

**Acts** : Code of Criminal Procedure (CrPC) , 1973 - Sections 439; Customs Act, 1962 - Sections 108 and 123(2); Evidence Act, 1872 - Sections 24

**Appeal No.** : Crl. M. (M) No. 453/2001

**Appellant** : Vijay Kumar

**Respondent** : Customs

**Advocate for Def.** : Mr. Sunil Sharma, Special Public Prosecutor

**Advocate for Pet/Ap.** : Mr. D.C. Mathur, Senior Adv.,; Mr. Ajay Digpaul and; Mr. S.

**Judgement** :
ORDER

**R.C. Chopra, J.**

1. This order shall dispose of petitioner's application for bail under Section 439 of the Code of Criminal Procedure.

2. The facts, relevant for disposal of this petition briefly are that on 16.12.2000 one Subhash Sachdeva, co-accused of the petitioner came to India on a flight from Hongkong. While he was walking through the Green Channel, he was stopped by the Customs Officers (Preventive). On search, 11,950 pieces of watch movements and 8 mobile phones were recovered from his possession, which were not being imported legitimately. The value of these items was about Rs.5,42,000/-. A statement of Subhash Sachdeva was recorded under Section 108 of the Customs Act in which he disclosed that he was approached by one J.S. Pruthi living in AIIMS, Ansari Nagar, New Delhi with an offer to visit Hongkong without incurring any expenditure but in lieu thereof he shall bring certain goods from there. He agreed, upon which said J.S.Pruthi arranged air tickets as well as foreign exchange. This air fare was paid by the present petitioner through a cheque. The foreign currency was also purchased by the petitioner by giving a cheque of Rs.2,38,165/-. After reaching Hongkong, Subhash Sachdeva was given 12 packets of watch movements and 8 mobile phones by Pruthi and was asked to hand over the same to the petitioner Vijay Kumar. Immediately after arriving at Indira Gandhi International airport. Subhash Sachdeva gave a phone call to the petitioner on mobile phone informing him that the watch movements and mobile phones had been brought and he should collect the same, but petitioner told him that he would collect the goods next day. After his apprehension Subhash Sachdeva once again informed the petitioner that he had been caught by Customs, upon which the petitioner replied that there was no need to worry and we would make arrangements and come to the Airport at 10.00 a.m. for getting him released. At about 10.00 a.m., the Customs Officers brought Subhash Sachdeva outside the Airport where the petitioner Vijay Kumar was found standing. On the identification of Subhash Sachdeva, the petitioner was given summons by the Customs Officers. The petitioner was found doing the business of watches in Lajpat Rai Market. He made a statement under Section 108 of the Customs Act admitting that the watch movements being brought by Subhash Sachdeva were for him. He was also arrested and after necessary investigations, a complaint was filed against him. It may be mentioned here it self that according

to the complainant, the investigations confirmed that the payment for journey of Pruthi and Subhash Sachdeva was made by the petitioner and payment for procuring foreign exchange was also made by him by issuing a cheque of his firm in the sum of Rs.2,38,168/-. It was also discovered that the petitioner was earlier also involved in one case regarding smuggling of 300 gold biscuits and one case for smuggling of watch movements. These case were still pending.

3. Mr.D.C.Mathur, Senior Advocate has vehemently argued that the statement made by the petitioner under Section 108 of the Customs Act cannot be read or relied upon in as much as the petitioner was already in custody of the Customs Officers before making statement and his statement was hit by Section 24 of the Evidence Act as it was not a voluntary statement. He further submits that the investigations are already over and there is no chance of the petitioner tampering with the prosecution evidence in any manner as most of the witnesses to be produced by the complainant are official witnesses. He submits that there are no chances of his absconding and prays that suitable conditions may be imposed while granting him bail.

4. In support of his arguments, he relies upon judgments in Assistant Collector of Central Excise, Rajamundry Vs . Duncan Agro Industries Limited & Others : 2000 CriLJ4035 , Anil Mahajan v. Commissioner of Customs & Anr. Apex 2000 (3) Delhi 369 and State of Maharashtra Vs . Nainmal Punjaji Shah And Another : (1969)3SCC904 . Learned counsel for the respondent on the other hand, has opposed the application on behalf of the petitioner on the ground that he was the brain behind the smuggling in question and in view of his past history, he does not deserve to be released on bail. He also submits that the petitioner can be punished up to 7 years imprisonment as the offence is covered by Sec. 123(2) of Customs Act. He has relied upon judgments in Ajay Rajpal Vs . Collector of Customs & Others, : [1993]3SCR497 and Sanjay Verma v. State 1991 JCC 273.

5. The main contention of learned counsel for the petitioner is that the statements of the petitioner as well as his co-accused Subhash Sachdeva cannot be relied upon as the same were neither voluntary nor true and were hit by Section 24 of the Evidence Act. He relies upon a judgment of Supreme Court of India (SIC)

Assistant Collector of Central Excise, Rajamundry v. Duncan Agro Industries Limited & Others, (supra) in which Their Lordships held that inculpatory statement made by a person under Section 108 of the Customs Act has no tinge of inadmissibility if the person while making it is not in police custody, but nonetheless the caution in law is that such a statement should be scrutinised by the Courts in the same manner as confession made by an accused person to any non-police personnel. It was held that such a statement has to pass the tests prescribed in Section 24 of the Evidence Act. This legal preposition is beyond the scope of any challenge, but at this stage while considering a bail application, this Courts is not in a position to give a finding as to whether the statements made by the petitioner or his co-accused were inadmissible being hit by Section 24 of the Evidence Act. It would be for the trial Court, only on the basis of evidence adduced before it, to decide as to whether it can be held to be so. In Ajay Rajpal's case (supra), a Division Bench of this Court had also taken the same view and had held that the question as to whether such a statement is fee, voluntary and truthful or not, can be seen at the trial only. As observed in the said judgment in the present case even the petitioner has not so far retracted his statement under Section 108 of the Customs Act, which clearly implicates him in the impugned transaction of smuggling of watch movements and mobile phones. It prima facie appears that the petitioner had voluntarily gone to the India Gandhi International Airport with a view to help his co-accused Subhash Sachdeva when a notice under Section 102 of the Customs Act was served upon him and he made a statement under Section 108 of the Act. The detention order at P-79 does not show that Subhash Sachdeva was in custody before making a statement under Section 108 of the Act in as much as it merely related to the detention of the articles brought by him.

6. Learned counsel for the petitioner has vehemently argued that in view of the fact that the complaint has already been filed, investigations are already over and there are no chances of his absconding, there are no grounds at all for detaining him in custody during the trial, which is likely to take sufficient time. He relies upon a judgment of this Court in Anil Mahajan Vs . Commissioner of Customs and Another, : 2000ECR36(Delhi) in which my brother Judge had deeply examined the considerations relevant for grant or refusal of bail and had come to the conclusion that the accused, who was involved in smuggling of synthetic fabrics of the value

of over Rs.1 crore may be released on bail. I have gone through the said judgment. I am in absolute agreement with the legal prepositions propounded by my brother Judge. In the present case, however, the gravity of the allegations against the petitioner gets aggravated for two reasons. Firstly he being a dealer in watches roped co-accused Subhash Sachdeva also in an unlawful activity, through one Pruthi by offering him bait of free trip to Hongkong, thereby exposing a law abiding citizen to the smuggling channel. Secondly, the petitioner is shown to be a habitual offender as he is already involved in a case regarding smuggling of gold biscuits and another case regarding smuggling of watch movements. He is on bail in those cases also and as such, it can be safely presumed that if he is released on bail in this case, he would continue his smuggling activities, which have the effect of eating into the vitals of the economy and retarding the progress of the nation. Such offenders do not deserve any leniency whatsoever and have to be dealt with sternly.

7. In the result, I am of the considered view that the petitioner, who appears to be involved head and shoulders into smuggling of watch movements, in which he trades, does not deserve to be enlarged on bail. The petition, thereforee, stands dismissed.

8. The trial Court however is directed to proceed with the complaint expeditiously so as to ensure that not more than 15 days' adjournment is ever given in the case unless there are vacations and the trial is completed within one year.

9. Nothing stated herein shall be taken as an expression of opinion on the merits of the case pending before the trial Court.

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