

Harish Narayan Singhani and Others Vs. State

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Court : Delhi

Decided On : Mar-08-1999

Reported in : 1999IIAD(Delhi)763; 78(1999)DLT726

Judge : J.B. Goel, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 438 and 439; [Indian Penal Code \(IPC\), 1860](#) - Sections 120-B, 420, 467, 468 and 471

Appeal No. : Crl. M. (M) No. 331/99

Appellant : Harish Narayan Singhani and Others

Respondent : State

Advocate for Def. : Mr. A.K. Dutt, Adv.

Advocate for Pet/Ap. : Mr. Ram Panjwani, Sr. Advocate and; Mr. Vijay Panjwani, Adv

Judgement :

ORDER

J.B. Goel, J.

1. By this order the aforesaid two petitions (Crl. M. (M) 331/99) and (Crl. M. (M) 342/99), both for bail, first under Section 439 and the second under Section 438 of

the Code of Criminal Procedure (for short the 'Code') are being disposed of.

2. Both these petitions arise out of RC No. 10(E)/96-SIU-VIII registered by the CBI under Sections 120-B read with Sections 420, 467, 468 and 471 IPC. The petitioners are two of the accused.

3. Learned counsel for the petitioners has strenuously contended that no forgery, fraud or cheating has been committed by the petitioners and case is false and baseless and their prosecution is unwarranted.

4. For appreciating this contention, it will be relevant to go into the brief facts of the case which are as follows.

5. By virtue of Indo-EU Bilateral Textile Agreement, products falling under Category 26 i.e. Powerloom 'Ladies dresses' are placed under restrained category.

6. On the basis of information received from European Commission through Indian Embassy, Brussels and on verification of this information that ladies dresses falling in 'Category 26' had been exported on forged certificates of AEPC, a complaint was lodged by Deputy Director (Quota Policy) Apparel Export Promotion Council, New Delhi (for short 'AEPC') on 31.12.1996 alleging that M/s. Kapil Products has exported powerlooms (PL) ladies dresses to M/s. What Everyone Wants and M/s. Glossy Fashion Ltd., both of United Kingdom (UK) on the basis of fake and forged five particular export certificates issued by the AEPC. On this information RC No. 10(E)/96-SIU-VIII was registered by the CBI.

7. Investigation by the CBI have revealed that M/s. Kapil Products and M/s. Manik Enterprises are registered with AEPC as exporters.

8. In pursuance of the existing Export Policy the exporter had to apply to AEPC for export entitlement certificate in respect of restricted category of garments. M/s. Kapil Products and M/s. Manik Enterprises were granted four and one such export certificates respectively, as detailed below :-

3. Invoice No. KP-123/95; GR Form No. AJ 252882; Certificate of Origin No. INGB-524-06628; Shipping Bill NO. 87530 dated 29.4.95; Airway Bill No. 217/11440236 dated 28.4.95 1656 Pcs. for Pound 8280 (C & F).

4. Invoice No. KP-124/95; Certificate of Origin No. INGB-524-676645; Shipping Bill No. 94282 dated 9.5.95; Airway Bill No. 020-26464961 020-26464961 dated 29.4.95 2358 Pcs. for Pound 10493 (FOB).

5. Invoice No. KP-125/95; Certificate of Origin No. INGB-124-676644; Shipping Bill No. 119933 dated 20.6.95; Airway Bill No. 014-81066812 014-81066812 dated 20.6.95 1000 Pcs. for Pound 2000 (FOB).

11. M/s. Kapil Products are maintaining current account No. 962 in Oriental Bank of Commerce, Panchkuian Road, New Delhi. The relevant documents in respect of three of the consignments (No. 121/95, 122/95 and 123/95) were negotiated/submitted to the said Bank by Smt. Monika Harish Singhani (petitioner) vide her letter dated 6.5.95 against three Bills of Exchange No. KP-121/95, KP-122/95 and KP-123/95 dated 11.4.95 for a total amount of 24039 Pound Along with Airway Bill Nos. 2171143-6213, dated 27.4.95 and 2171144-0236 dated 28.4.95. These three Bills of Exchange were realised by the said Bank through their FOBC No. 4536 through Hongkong and Shanghai Banking Corporation Ltd., UK and 24004 Pounds equivalent to Rs. 11,92,193/- were realised on 5.6.95. Pounds 2000 were realised on 19.7.96 in that account in respect of invoice No.125 dated 2.6.1995 and price of invoice No. 124/95 amounting to Pounds 10493 (Rs. 5,58,621/-) was collected through relevant documents negotiated through Allahabad Bank and credited in account No. 400842 of Kapil Products in Allahabad Bank, Nehru Place Branch, New Delhi on 22.5.1995.

12. Four of the original GR-1 Forms No.252879, 252880, 252882 and 676645 pertaining to exports made against four of the invoices available with the Reserve Bank of India reveal that in the original forms the address of the consignee is mentioned as 'What Everyone Wants, 296, Springfield Road, Glasgow, G-40, 3-HZ, Switzerland' as against the destination of export in the duplicate GR-1 forms used for export shown is 'United Kingdom' whereas the fifth GR-1 is not available. In the Custom Control Register also the country and port of imports recorded is

Switzerland.

13. Apparently, these goods have been exported on the basis of forged GR Forms and certificates of origin and other relevant documents.

14. These goods have been exported on FOB value duty drawbacks as shown below have been realised by M/s. Kapil Exports.

S.No.	Shipping	FOB Value	Duty	Bill No.	Amt. (Rs.)	Drawback
1.	94282	Rs. 5,25,055	Rs. 52,505dt.	9.5.95	2. 87529	Rs. 5,04,033
						Rs. 50,043dt.
						29.4.953.
						87530
						Rs. 3,71,403
						Rs. 37,140dt.
						29.4.954.
						85358
						Rs. 2,31,918
						Rs. 23,191dt.
						29.4.955.
						119933
						Rs.1,00,620
						Rs. 12,577dt.
						20.6.95
						Total
						Rs.17,33,029
						Rs.1,75,876

15. This duty drawback has been drawn by the exporter M/s. Kapil Products from the Delhi Customs on the basis of forged and fabricated documents thereby causing wrongful loss to the Government and wrongful gain to itself.

16. Mrs. Monika Harish Singhani (petitioner) is proprietor of M/s. Kapil Products and Mr. Harish Narayan Singhani the other petitioner who is her husband is the proprietor of M/s. Manik Enterprises.

17. Mr. Navin Sharma, Director of M/s. Shine Air Cargo (Pvt.) Ltd. was the sub-agent of the cargo house agent.

18. Apparently, these persons had entered into conspiracy in exporting goods illegally and unauthorisedly by committing forgery, have wrongfully drawn duty drawbacks and thereby having cheated the Government.

19. Learned counsel for the petitioner has contended that the foolproof procedure prescribed for obtaining certificate from AEPC, preparing export documents by the exporter and their scrutiny and checking by various agencies at the port of export leave no scope for goods being exported illegally or any document being forged; and that in this case also the documents have been issued by AEPC and have been checked by various concerned authorities and as such there is no question of forging any documents or cheating by the petitioners.

20. Whereas learned counsel for the respondent has contended that this plea of the petitioners is misconceived as the goods have been exported on the basis of forged and fabricated documents as a result of conspiracy hatched between the two petitioners and the export agent and may be also by concerned officials of the authorities responsible for checking the documents and giving clearance for export and that for the complicity of those other officers of various agencies involved further investigation is still in progress and a supplementary report under Section 173(8) of the Code will be submitted after the investigation is complete. It is also contended that if bail is granted to the petitioners it will thwart a proper and fair investigation of a well orchestrated conspiracy and that even otherwise it is not in the interest of justice nor in public interest to admit the petitioners to bail.

21. The investigation made and material collected show that the goods of the category and value as mentioned above have been exported on the basis of the documents noticed above; and that on the basis of these documents and certificates duty drawback amounting to Rs. 1,75,876/- has been realised by the petitioners from the Customs authorities through their banks.

22. The procedure for obtaining certificates for entitlement for export, and for exporting the goods has been prescribed in the Export Policy declared by the Government. An exporter has to apply to AEPC for entitlement certificate for each category of restricted goods with quantity to be exported to the countries of foreign buyer who on verification issues certificate entitling an exporter to export specific quantity and goods. Then on the basis of orders received from the foreign buyer, the exporter approaches AEPC with relevant documents of export namely, invoice (6 copies), GR Form declaration (2 copies), shipping bills (6 copies). The AEPC processes the documents and after verifying the correctness thereof prepares visa in triplicate. One carbon copy each of Visa, invoice and shipping bill is retained by AEPC and other documents are returned to the exporter. The exporter submits the original visa with copies of registration certificate, invoice and shipping bill for verification and clearance and representatives of Textile Committee, EOK, New Delhi, Customs and AEPC who have their offices at the port of export give clearance for the export and after verification and clearance the following documents are returned to the exporter.

- (a) Original visa.
- (b) 4 copies of invoice.
- (c) 1 copy of GRI Form.
- (d) 4 copies of shipping bills.

23. Customs Department retains one copy each of invoice, shipping bill, visa and the original GR-1 form. The exporter sends the original visa with the invoice and packing list to overseas buyer.

24. Original Visa certificates issued by AEPC would be available with the exporter or his buyer of the goods. GR-1 Forms available with Reserve Bank of India would contain the particulars of the genuine certificates issued by AEPC and which prima facie suggest that the goods have been exported by the petitioners on the basis of forged and fabricated certificates and Visa of AEPC and by use of such forged documents not only restricted category of goods have been illegally exported but wrongful gain has been derived by the petitioners and wrongful loss has been caused to the Government by claiming duty drawback. CBI has collected some of duplicate forged documents used for export purpose.

25. One of the petitioner is seeking anticipatory bail. An order under Section 438 being of an exceptional type there must be a special case made out for passing such an order. It should not be allowed to circumvent the normal procedure of arrest and investigation or to prejudice the investigation.

26. In Pokar Ram Vs . State of Rajasthan : 1985 CriLJ1175 regarding the scope of Section 438 it was observed as under :-

'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.'

27. In *The State of Andhra Pradesh Vs . Bimal Krishna Kundu & Anr. : 1997 CriLJ4056* , disapproving the order of the High Court granting anticipatory bail in a case involving conspiracy, the Hon'ble Supreme Court has observed that :

'... It is disquieting that implications of arming 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 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'

28. Prima facie offence under Sections 120-B, 420, 468 and 471 IPC has been made out against both the petitioners. Investigations are not yet complete and further investigation are stated to be in progress. Public exchequer has been cheated of huge funds and thus public interest is involved. Grant of anticipatory bail would not be proper and justified nor any exceptional circumstances are shown to circumvent the normal procedure of arrest and investigation. Grant of bail might thwart and prejudice further investigation. The learned Additional Sessions Judge has not found it a fit case for granting anticipatory bail. In the facts and circumstances, it neither seems just and proper nor in larger public interest to admit the petitioner Mrs. Monika H. Singhani to anticipatory bail.

29. Against Harish Narayan Singhani also prima facie there is material showing his involvement for offences under Sections 120-B, 420, 468 and 471 IPC. The offences committed have great repercussions affecting the public exchequer. The offence is grave and serious. Further investigation should be made unhampered.

30. Taking into consideration, the nature and gravity of offence and the public interest, it is not just and proper to enlarge the petitioners on bail.

31. Both the petitions are accordingly dismissed.