

Hakam Chand and 6 ors. Vs. State of Rajasthan and anr.

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Court : Rajasthan

Decided On : Sep-23-1988

Reported in : 1988WLN(UC)418

Judge : Mohini Kapoor, J.

Appeal No. : S.B. Cr. Misc. Bail Application Nos. 2478 to 2487 of 1988

Appellant : Hakam Chand and 6 ors.

Respondent : State of Rajasthan and anr.

Disposition : Application allowed

Judgement :

Mohini Kapoor, J.

1. Complaints under Sections 276B and 278 of the Income Tax Act have been filed against the accused petitioners by the Income Tax Officer before the Chief Judicial Magistrate (Economic Offences) Jaipur. Upon these complaints the Chief Judicial Magistrate has ordered the issue of non-bailable warrants for the arrest of these petitioners. The case of the department appears to be that the company M/s. Bedla Flour Mills and Allied Industries Private Limited failed to deduct tax at source on the interest paid by it to the Directors. It is the contention of the learned Counsel for the petitioners that what ever tax was due has been deposited before

the presentation of the complaints, though in some cases the delay in deposit was from 4 to 16 months. The learned Sessions Judge while dealing with the bail applications observed that the tax had been deposited in 7 cases only but by showing challans the petitioners have been able to make out a prima facie case that tax has been deposited in the 10 cases prior to the institution of the complaints.

2. The department wants to show that this is not a case of simple delay in the deposit of tax but actually this is a case where the tax was not deposited at sources but the individuals claimed refund of the tax saying that it had been deducted at source but was not payable by the individuals. I am afraid, this contention though raised has not been substantiated by showing the record to me and it can be said that the department will get an opportunity of proving this before the trial Magistrate.

3. In *Rajvir Singh and Ors. v. State* S.B. Cr. Misc. Bail Application No. 1949 of 1988, decided on 10th August, 1988, it has been observed by me after considering the decisions of this court that the facts and circumstances of the case are to be considered for deciding whether the petitioners should be released on anticipatory bail or the non-bailable warrants should be converted into bailable warrants. The fact that the tax had already been deposited was considered to be relevant in finding as to what was the nature of the offence, which could be said to have been committed. Looking to the circumstance that the tax has already been deposited in these cases and the total amount of tax said to be due was to the tune of Rs. 85000/- and the petitioners will face the trial, the non-bailable warrants issued, can be converted into bailable warrants.

4. These petitions are accepted. The non-bailable warrants issued by the trial court shall stand cancelled if all the petitioners appear before the trial court on 27th October, 1988. In case they do not appear the non-bailable warrants shall be executed. In the event of the appearance of the petitioners before the Chief Judicial Magistrate (Economic Offences), Jaipur, they shall be released on bail provided each of them furnishes bond in the sum of Rs. 10,000/- with two sureties in the amount of Rs. 5,000/- each to the satisfaction of the CJM, (Economic

Offences), Jaipur for their appearance during the course of trial on all dates of hearing and as and when they are called upon to do so on the following conditions:

[1] that the petitioners shall make themselves available for interrogation by a Officer as and when required;

[2] that the petitioners shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any Police Officer;

[3] that the petitioners shall not leave India without the previous permission of the court.

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