

**Director of Revenue Intelligence Vs. Vinod Kumar Mulani**

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**Court :** Delhi

**Decided On :** May-11-2012

**Judge :** M.L. Mehta

**Appeal No. :** CRL.M.C. 3234 OF 2010

**Appellant :** Director of Revenue Intelligence

**Respondent :** Vinod Kumar Mulani

**Judgement :**

**M.L. MEHTA, J.**

1. The Directorate of Revenue Intelligence (hereinafter referred to as the “department”), by way of the present petition, has challenged the order dated 10.09.2010, passed by the learned ACMM granting bail to the respondent in the matter titled, “Vinod Kumar Mulani v. Directorate of Revenue Intelligence” on the ground that the learned ACMM exceeded his jurisdiction in granting bail to the respondent.

2. The brief facts necessitating the disposal of the present petition are that, on the basis of an intelligence input about the operation of a syndicate involved in the fraudulent avilment of duty drawback by exporting inferior quality garments in the name of bogus front firms, searches were conducted at various places including the residence of the respondent. Several incriminating material was collected from the residence of the respondent. Thereafter, several witnesses were examined by

the department and their statements recorded under Section 108 of the Customs Act (hereinafter referred to as the "Act"). The involvement of the respondent was said to be mentioned in the statements so recorded by the department. The respondent was also summoned several times under Section 108 of the Act, however, he failed to comply with the summons. Thereafter, on 06.09.2010, the wife of the respondent filed a bail application qua the respondent in the Court of learned ACMM. The learned ACMM vide order dated 07.09.2010, granted interim bail to the respondent. The aforesaid order was challenged in this Court on the ground of maintainability of the bail application, which was disposed off vide order dated 10.09.2010 with the direction to raise all such pleas before the learned ACMM. Thereafter, after hearing the arguments from both parties the learned ACMM granted bail to the respondent vide order dated 10.09.2010. The department has challenged this order of the learned ACMM on the ground of maintainability of the bail application. Hence, the present petition.

3. The learned counsel for the petitioner department submitted that offences under the Act are non-bailable and non-cognizable. It was submitted that the respondent Vinod Kumar Mulani had been summoned by the department on several occasions for enquiry under Section 108 of the Act, however he failed to comply with the summons. It was submitted that, the learned ACMM while dismissing an application of the respondent for release of certain documents and currency seized from his residence, observed that the respondent had failed to join the investigation. It was further submitted that the department had filed an application dated 03.11.2009, before the learned CMM requesting for the transfer of the case from the Court of ACMM to any other competent Court. The present respondent thereafter, surrendered before the same ACMM. It was further submitted that no formal accusation or complaint had been registered against the respondent and the matter was pending investigation. Therefore, the learned ACMM had no jurisdiction to entertain the bail application of the respondent under Section 437 Cr PC. The sum and substance of the arguments advanced by the learned counsel for the petitioner is that, at the stage where the respondent has not been formally accused, as no case has been registered against him, and he has merely been summoned by the Custom authorities under Section 108 of the Act for enquiry, the learned ACMM exceeded his jurisdiction by granting the respondent regular bail

under Section 437 Cr PC.

4. Per Contra, the learned counsel for the respondent submitted that the respondent had written a letter to the department in response to the summons dated 29.09.2010, communicating his inability to arrange the necessary documents and sought time to arrange the same. It was submitted that subsequently he appeared before the concerned officer. Drawing my attention to Section 437 Cr PC, it was contended that the, the language of Section 437 Cr PC reads as, "When any person accused of, or **suspected of**, the commission of any non-bailable offence", he shall be eligible to seek regular bail from the competent Court. It was submitted that the show cause notice issued by the department to the respondent itself evidences that the respondent was a suspect in the alleged offence. It was further submitted that, the order dated 07.09.2010 granting interim bail to the respondent, was challenged before this Court, however this Court refused to take any action and directed the department to raise such pleas before the learned ACMM. It was contended that the respondent, being a suspect, in the alleged offence, appeared and surrendered before the competent Court, and the learned ACMM, within its jurisdiction, on merits, granted regular bail to the respondent. Reliance is placed on **Niranjan Singh and Anr v. Prabhakar Rajaram Kharote and Anr, 1980 SCC (Cri) 508** and **Pawan Kumar Pandey v. State of U.P 1997 Cri LJ 2686**.

5. In rebuttal, the learned counsel for the department submitted that such exercise of jurisdiction by the Magistrate will not be applicable to the Customs Act and these are offences which are non-cognizable and non-bailable. It was submitted that the Show Cause notice relied upon by the respondent was w.r.t civil adjudication. It was further contended that the respondent is not covered within the provisions of Section 437 Cr PC or Section 439 (2) Cr PC, as he was not an accused/suspect. He relied upon **Veera Ibrahim v. State of Maharashtra, (1976) 2 SCC 302** and **Poolpandi v. Superintendent, Central Excise 1992 (60) E.L.T. 24 (S.C.)**.

6. I have heard the learned counsels for the parties and perused the documents available on record.

7. Let us analyze the ambit and scope of Section 437 Cr PC, which reads thus:

“437. When bail may be taken in case of non-bailable offence- (1) When any person accused of or suspected of the commission of any non-bailable offence is arrested or detained without warrant by an officer-in-charge of a police station or appears or is brought before a Court, other than the High Court or Court of Session he may be released on bail but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life”:

8. Section 437 Cr PC is an enabling provision which permits a Magistrate to grant bail and it also confers right on the accused to ask for liberty or obtain an order of release on bail from the Court. On bare perusal of Section 437 it is noticed that only two groups of persons are entitled to bail. First, persons accused of any non-bailable offence, and, secondly, persons suspected of commission of such offence. Therefore, these persons have 'locus standi' to obtain bail.

9. The section assigns the authority competent to grant bail, namely, a “Court”, other than the High Court and the Court of Session. It specifies the nature of the offence i.e. non-bailable offences. The Section also prescribes the circumstances when bail may be granted to an accused or suspected of the commission of a non-bailable offence, namely, (1) when the accused has been arrested or detained without warrant by an officer-in-charge of a police station, (2) when the accused appears, or, (3) he is brought before a Court, other than the High Court or Court of Session, he may be enlarged on bail by "the Court".

10. Therefore, the conditions precedent to entertain an application for bail are whether the person is an accused or suspected of the commission of any offence. If the learned Magistrate finds that he is accused of an offence or is suspected of commission of a non-bailable offence, the second condition comes into play, namely, whether he is under arrest or detention without warrant by an officer-in-charge of the police station. Apart from this an accused may be brought before the Court by any police officer or authority competent to arrest an accused or any person legally competent to arrest him. There is another class or type of persons who may be enlarged on bail under Section 437 Cr PC, that is, a person who is

accused of or suspected of commission of a non-bailable offence and appears voluntarily before the Court. Such accused may be enlarged on bail by the order of the Court or the Court may straightway send the accused to jail if it does not grant bail. As such, whenever an accused appears voluntarily before the Court and surrenders to the Court, he remains throughout in the custody of the Court until he is enlarged on bail. The meaning of the term "custody" is "physical control" or at least physical presence of the accused in Court coupled with submission to the jurisdiction and order of the Court, as explained by the Hon'ble Supreme Court in, **Niranjan Singh (Supra)**. The Hon'ble Supreme Court held that,

“7. When is a person in custody, within the meaning of Section 439 Cr.P.C. When he is in duress either because he is held by the investigating agency or other police or allied authority or is under the control of the court having been remanded by judicial order, or having offered himself to the court's jurisdiction and submitted to its orders by physical presence. No lexical dexterity nor precedential profusion is needed to come to the realistic conclusion that he who is under the control of the court or is in the physical hold of an officer with coercive power is in custody for the purpose of Section 439. This word is of elastic semantics but its core meaning is that the law has taken control of the person. The equivocal quibblings and hide-and-seek niceties sometimes heard in court that the police have taken a man into informal custody but not arrested him, have detained him for interrogation but not taken him into formal custody and other like terminological dubieties are unfair evasions of the straightforwardness of the law. We need not dilate on this shady facet here because we are satisfied that the accused did physically submit before the Sessions Judge and the jurisdiction to grant bail thus arose.”

11. Further, Section 104 of the Act empowers a custom officer, to arrest a person, against whom he has “reason to believe” that he has committed an offence under the Act. It further states that, every person arrested by such customs officer, shall be produced before the Magistrate, without unnecessary delay. Therefore, even if a custom officer arrests a person, he has to be produced before the Magistrate at the earliest, who may or may not grant him bail. The ratio laid down in the **Niranjan Singh's case (Supra)**, fortifies the fact that a person arrested by

competent authority, in this case the Custom authority, or a person who offered himself to the court's jurisdiction and submitted to its orders by physical presence, both are said to be "in custody", within the meaning of Section 439 Cr PC. Therefore, a person surrendering to the jurisdiction of the competent Court could be equated to being arrested by a Customs officer. Therefore, the Magistrate acquires jurisdiction once the accused or the suspect, has submitted himself to the jurisdiction of the Court.

12. In the instant case, the learned counsel for the petitioner contended that the exercise of such power by the learned ACMM collides with the exclusive power of the High Court or the Court of Session conferred on them under Section 438 Cr PC.

13. The ambit and scope of Section 438 are quite distinct and separate. The distinctive features are that in Section 438 - (i) the applicant need not be an accused person, (ii) he need not be brought before a court nor his personal appearance in Court is a condition precedent; he may apply without personally appearing before the Court; (iii) the applicant need not surrender to the physical control of the Court nor need he submit to the custody of the Court. Therefore, regular bail under Section 437 Cr PC and anticipatory bail under Section 438 Cr PC, operate in different spheres however the relief provided is similar.

14. The contention of the department that as there was no formal complaint or allegation being leveled against the respondent, the learned ACMM did not possess the necessary jurisdiction to entertain the bail application of the respondent, is untenable and highly misplaced. It is an admitted fact that the residence of the respondent was searched by the custom authorities and several incriminating documents were seized. It is further admitted that the statement of other witnesses under Section 108 of the Act, evidence the alleged involvement of the respondent in the offence. The learned ACMM after appreciating the evidence available on record, decided the case on merits and granted bail to the respondent. It is an accepted proposition of law, that a person summoned by the Custom authorities under Section 108 of the Act may not be an accused person, however, a person summoned could be a potential suspect or a potential accused

person. In the case of **Balkrishna Chhaganlal Soni v. State of West Bengal, AIR 1974 SC 120**, the Supreme Court after discussing Section 107 and 108 of the Act, held that,

“Does Section 107 enable the interrogation of even the potential delinquent or must it be confined only to witness who throw light on the delinquent's contravention of the law. 'Any person' in the section certainly covers every person including a suspect and potential accused. These words of the statute have to be interpreted in the light of the policy and purpose of the law. The object of Section 107, located in the neighbourhood of Section 108, indicates that while the normal process of enquiry is facilitated by Section 108, investigatory emergencies are taken care of by Section 107. May be situations arise where the failure to question a witness quickly may mean irretrievable loss of a valuable material and Section 107 meets this need. The context in which the words "any person" occur, the object of the provision and the policy underlying Ch. XIII of the Customs Act assume relevance and become material in the construction of the text.”

15. Therefore, in view of the progress in the investigation and the documents available on record, the inference of the respondent to consider himself as a suspect, although not formally charged, is justified. Further, the learned ACMM in his order granting bail to the petitioner, has recorded the involvement of certain custom officers in the offence, and has stated that there are allegations of illegal detention, against those custom officials, pertaining to the same case. Therefore, the apprehension of the respondent to be kept in illegal custody, is justified. The right of the respondent, to surrender himself to the competent Court, squarely falls within the ambit and scope of Section 437 Cr PC, and cannot be held to be arbitrary or illegal. The provisions of a Special Act, in this case the Customs Act, cannot override the provisions of the Cr PC, unless expressly provided so in the special Act.

16. The cases relied upon by the petitioner's counsel namely **Veera Ibrahim (Supra)** and **Poolpandi (Supra)**, have no application in the present case as they discuss the constitutional right of an accused under Article 20(3) and are clearly distinguishable on facts.

17. Further, the learned ACMM in its order granting bail to the respondent, has directed the respondent to join the investigation, as and when required by the custom authorities. Therefore, the grant of bail to the respondent shall not hamper the investigation or prejudice the investigation. The department shall be at liberty to pursue remedies available to them under law.

18. I find no infirmity with the order of the learned ACMM.

19. The petition is dismissed.

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