2004-(BO1)-GJX-0780-BOM

Deputy Director, Dri
Vs.
Anoop Kumar Wadhere & Ors.

Court :

Decided On :
September 15, 2004

Equivalent Citation(s) :
2004-(064)-RLT-0645-BOM, 2004-(178)-ELT-0156-BOM

Judge(s) :
A M Khanwilkar

Judgment :
DEPUTY DIRECTOR, DRI v. ANOOP KUMAR WADHERE & ORS.

Criminal Writ Petition No. 1077 of 2004, dated September 15, 2004.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

Counsel : Shri J. C. Satpute - Petitioner.

S/Shri Shirish Gupte, A. P. Mundergi, S. N. Kantawala, V. N. Kantawala - Respondent.

ORDER :

Heard learned Counsel for the parties. This petition essentially seeks to set aside the order passed by the Additional Chief Metropolitan Magistrate dated May 21, 2004 releasing the respondents on bail on certain conditions. The grievance made before this court on behalf of the petitioner in substance is that there was no just reason for releasing the respondents on bail, especially in the light of the stand taken on behalf of the petitioner in the remand application which was also considered by the concerned Magistrate while entertaining the bail application filed by the respondents. In the remand application,

it was asserted on behalf of the applicants that it is evident that the respondents during the investigation before arrest have given wrong information and misleading clues to the concerned investigating officer and further investigation was necessary in view of the complexity of the case. It is submitted that in spite of such stand taken, the Magistrate proceeded to observe that the investigation is almost completed and essentially on that basis, proceeded to release the respondents on bail. The Magistrate has also observed in the bail order, which is questioned before this court that there is no need to put the respondents in custody just for mere recording of their further statements on oath because already their several statements are recorded. The other reason which has weighed with the Magistrate that the respondents have already paid a sum of Rs. 1 Crore as duty to the applicants which shows their bonafides. Essentially on these three grounds, the Magistrate proceeded to release the respondents on bail immediately on the next day after arrest. The respondents, it is not disputed, were arrested on 20th May 2004 and were produced on the next day before the Magistrate for remand along with formal application filed on behalf of the applicants in that behalf. The respondents in turn preferred application for bail, which has been granted by the concerned Magistrate by an order dated May 21, 2004.

Mr. Satpute, learned Counsel for the petitioner submits that the Magistrate has hastened the matter and not even granted judicial custody as was prayed on behalf of the petitioner even for a short period to enable the investigation to be completed or to be taken to its logical end. It is submitted that merely because the respondents have given statements on the previous occasion, does not mean that they need not be kept in judicial custody for further investigation. The learned Counsel has placed reliance on the decisions of this Court as well as Apex Court to contend that if the Magistrate has exercised discretion wrongly in granting bail in such a case, it is the boundened duty of the High Court to interfere and set aside such untenable orders. Reliance is placed on the decisions reported 1988 Cri. L.J. 1463 (Prashant Kumar v. Mancharlal Bhagatram Bhatia and Ors.) and in particular, on the observations made in para 7 of the said reported decision to contend that if the order of bail was passed unjustifiably at its very inception, the High Court will have to correct that position. Reliance is also placed on the decision reported in 1988 Cri. L.J. 624 (Assistant Collector of Customs R&I Bombay v. Shankar Govardhan Mohite and Ors.) and in particular para 6 wherein the court has rejected the argument canvassed on behalf of the accused that instead of cancelling the bail the accused can be put to strict conditions requiring them to attend the office of the Investigating Officer during longer hours every day. This Court has observed that such arguments cannot be countenanced as casual reporting during specified hours of the day cannot take the place of custody remand in order to facilitate a thorough investigation in to the crime. Reliance is then placed on the decision reported in 1992 Cri. L.J. 4032 (Harshad Mehta v. Union of India), where in it is observed that if the accused was in custody of the officers of the Enforcement Directorate, officers will be able to force him to concentrate on the issues and put pointed questions to him and extract relevant information. It is further observed that the technique of

interrogation also involves confrontation either with a person or documents and that is possible, and at least more effective, when the person being interrogated is in custody. Liberty of the citizen is desirable but also desirable is the need to detect, investigate and prosecute those guilty of any offence, not excluding economic offences. Placing reliance on the above observations, the learned Counsel for the petitioner contends that even in the present case the Magistrate declined fair opportunity to the investigating agency to make proper investigation and that granting of bail immediately of the next date was in the nature of releasing the respondents on anticipatory bail. On these arguments learned Counsel for the petitioner placing reliance on the decision of the Apex Court reported in A.I.R. 1985 S.C. 969 (Pokar Ram v. State of Rajasthan and Ors) in particular para 11 contends that such bail intrudes in the sphere of investigation of crime and the court must be cautious and circumspect in exercising such power of a discretionary nature especially when the investigation is in progress. Reliance is also placed on the decision of our High Court in the case of Say Gaud Kondagaud Bhurewar v. State of Maharashtra, reported in 2000 (4) Mh. L.J. 840 to contend that the arguments as canvassed on behalf of the respondents that more than four months have elapsed from the release on bail it will not be proper to withdraw the liberty granted to the respondents cannot be countenanced. Reliance was placed on observations made in para 28 of this reported decision wherein such argument was repelled on the ground that the prosecution has promptly moved the court for cancellation of bail are the accused having enjoyed liberty for short duration, was immaterial because confidence of common man in judiciary cannot be sacrificed by allowing wrong orders to be continued. On the above basis, the learned Counsel for the petitioner placing reliance on the affidavit as filed before this court contends that before the respondents were arrested they did not assist the investigation in a fair manner and in fact after the respondents were released on bail, they have given misleading information to the investigating officer, which is specifically averred in the rejoinder affidavit. Besides, instances are also indicated in the rejoinder affidavit as to in what manner the respondents have mislead course of investigation by giving wrong information. On the above basis the learned Counsel contends that the order as passed by the Magistrate dated 21st May 2004 be set aside and instead the respondents be directed to be placed in judicial custody for further investigation.

On the other hand, learned Counsel for respondents contend that before the arrest several statements of each of the respondents were recorded. Those statements have been recorded on oath under Section 108 of the Customs Act. Besides after the arrest on 20th May 2004, further statements of each of the respondents have been recorded. It is the case of the respondents that even before the arrest as well as after being released on bail, the respondents have fully cooperated with the investigating officer by furnishing whatever information was sought by him. The relevant documents have also been handed over to the I.O. It is stated that before the arrest respondents handed over photocopies of the relevant documents and made over original documents after they were released on bail. It is further submitted that the respondents are essentially engaged in the business of export and were dependent on

supporting manufacturers for processing the goods which were imported by them meant for re-export. In fact the respondents had no control over the affairs conducted by the said supporting manufacturer M/s. Deepak Agro at Nimach, Madhya Pradesh; whereas the manufacturing activity, undertaken by the said supporting, manufacturer could be and as being supervised by the Government officials of customs and excise department. Moreover, it is common ground that the containers were filled at factory premises and were transported from Nimach. It is, therefore, submitted that in such a situation the respondents cannot be blamed for mal-administration or any improper dealing by the said supporting manufacturer. Notwithstanding this respondents have immediately responded to the situation by offering to pay the requisite amount towards customs duty without prejudice to their rights and contentions, which shows their bonafide. The Counsel for the respondents further contend that the record clearly indicates that after the goods were imported the same were immediately transported for storage at Kanpur at Girdhar Gold Storage. The movement of the goods is supported by the documents which are already supplied to the I.O. The said documents would also indicate that the goods actually reached Girdhar Cold Storage at Kanpur from where the same were forwarded to the supporting manufacturer. It is further contended on behalf of the respondents that the respondents have attended the office of the I.O. on every singular date and have furnished all the necessary information which was called for and have answered every question posed to each of the respondents with information within their knowledge and control. It is submitted that there is not even one incident brought to the notice of this court that the I.O. was satisfied that the respondents have tried to evade information which was required to be supplied by them. Even after release of the respondents on 27st May 2004, the statements of each of the respondents have been recorded on several dates and the respondents have supplied relevant documents which are running into several hundred pages. Moreover, it is submitted that now respondents have already approached the Settlement Commissioner who is competent to grant immunity to the respondents even from prosecution and penalty on being satisfied that the necessary conditions are fulfilled by the respondents. It is, therefore, submitted that as the settlement commissioner is seized of the matter, it would be inappropriate to cancel the bail already granted by the Magistrate in favour of the respondents on valid consideration. The learned Counsel for respondents submitted that each of the reason stated by the Magistrate is supported from the record available before him at the relevant time and for which reason, it cannot be assumed that the Magistrate has released the respondents on bail for improper consideration.

Having considered rival submissions, I have no hesitation in observing that from the facts as were presented by Mr. Satpute, learned Counsel for the petitioners, it appeared that the Magistrate ought not to have released the respondents on bail immediately on the next day of arrest. But on deeper scrutiny of the documents, to my mind, it is not possible to accept the submission as is canvassed that the Magistrate released the respondents on improper consideration. The Magistrate has recorded three good reasons for releasing the respondents on bail. First reason which has weighed with the Magistrate

is material investigation is almost completed. It is not in dispute that before arrest of the respondents, atleast each of the respondents have given five statements whenever they were called for enquiry into the matter. Besides, the respondents have produced photocopies of the relevant documents which are running into several hundred pages. It cannot be disputed that the present offence is one essentially based on documentary evidence. If it is so, it cannot be said that the Magistrate was wrong in observing that material investigation is almost complete. Besides, the Magistrate has also observed that the judicial custody of the accused for recording of further statement was not necessary, inasmuch as even the earlier statements of the respondents which came to be recorded are on oath under Section 108 of the Customs Act. As the respondents have not only recorded statements but also produced relevant documents during the enquiry, no fault can be found with the Magistrate for observing that presence of the respondents in judicial custody for recording of further statements was unnecessary. Besides, the Magistrate has also taken into account the fact that as soon as the mischief came to light, the respondents volunteered to take corrective measures by depositing a sum of Rs. 1 Crore without prejudice to their rights and contentions. The correspondence exchanged by the respondents would also indicate their anxiety to unearth the mischief caused by the supporting manufacturer. In substance, the Magistrate was convinced that the respondents were pursuing the matter bonafide. There was nothing before the Magistrate to show that the respondents were not fully cooperating with the investigation. Indeed, in the remand application, the petitioners made out a ground that further investigation was necessary and also asserted that the information provided by the respondents was misleading. However, the genuineness of the documents are yet to be examined by the I.O. Merely because investigation is pending by itself cannot be a ground for continuing the arrest of the respondents. Having regard to the circumstances as obtained before the Magistrate, it is not possible to take a view that the Magistrate has wrongfully exercised discretion in the fact situation of the present case. Viewed in this perspective, it is not possible to set aside the order as passed by the Magistrate merely on the argument that the order is untenable being wrong exercise of discretion. In the view that I have taken the decisions which are pressed into service on behalf of the petitioner will be of no avail. Indeed, the Magistrate has released the respondents immediately on the next day of arrest. However, that does not mean that the order as was passed by the Magistrate was in exercise of powers under section 438 as such. However, it was a regular bail granted by the concerned Magistrate in favour of the respondents. Accordingly, the principles which are stated in the decisions in Say Gaud Kondagaud's case or for that matter in Pokar Ram's case will be of no avail. In any case, as mentioned earlier, I am not convinced with the arguments that in the case in hand the bail should not have been granted to the respondents at all.

Besides, it is seen from the record that even after release of respondents on bail, the respondents have attended every day before the I.O. and their several statements have been recorded. They have answered each question put to them by the concerned I.O. They have also produced the original

documents of the relevant records which were directed to be produced by the I.O. Viewed in this perspective, I find no reason to entertain this petition so as to set aside the order passed by the learned Magistrate releasing the respondents on bail. It is not necessary for me to go into the larger question raised that now the matter is pending before the Settlement Commission, although according to the petitioners, the Settlement Commission has wrongly entertained the application. However, that issue will have to be considered by that authority itself or by the appropriate forum. Suffice it to observe that there is no goods reason for setting aside the order releasing the respondents on bail. Hence, the petition is dismissed.