



IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PREM NARAYAN SINGH

ON THE 11th OF SEPTEMBER, 2024

MISC. CRIMINAL CASE No. 35700 of 2024

MADHUR GARG @ MADHUR AGRAWAL @ MADHUR BHAIYA

Versus

SUPERINTENDENT OF CUSTOMS

Appearance:

Shri Vivek Phadke, learned counsel for the petitioner and Shri Rohit Sharma, learned counsel for the applicant.

Shri Prasanna Prasad, learned counsel for the respondent.

ORDER

Heard and perused the case diary.

1. This is the first bail application filed by the applicant under Section 482 of the Bhartiya Nagrik Suraksha Sanhita, 2023 for grant of anticipatory bail who is apprehending his arrest in relation to Crime No.21/2021, registered at Police Station Commissioner of Customs, District Indore (M.P.) for the offence punishable under Sections 135(1)(b), 135(1)(i)(A) of Customs Act.

2. Prosecution story in brief is that, respondent No. 2 Commissioner of Customs has filed a complaint against the applicant and co-accused persons under Section 135 of the Customs Act before the Special Judicial Magistrate, Indore stating that the applicant is the mastermind behind the smuggling of 5 Kgs of gold and brought from Mumbai by vehicle bearing Registration No. MP04 CS 1620 which was registered in the name of his brother Shri Gourav Garg. It is alleged that the applicant 5 kgs gold was seized from Harnam Singh Dangi, Suraj Sharma & Rajkumar sitting in the car bearing registration No. MP04 CS 1620.



3. Learned counsel for the applicant submitted that the applicant is innocent and has been falsely implicated in the present crime at the instance of the complainant. It is also submitted that during the investigation of the vehicle, Harnam Singh Dangi, Suraj Sharma, Rajkumar sitting in the car bearing registration No. MP04 CS 1620 and carrying 5 kg foreign origin gold bars in their vehicle. Thereafter, during interrogation, it was alleged that the applicant and his brother had given cash of Rs.2,20,50,000/- to Harnam Singh Dangi to collect. He has further submitted that the Court has taken cognizance of the offence and issued summons under Section 204 of Cr.P.C. The power of arrest vesting the officers of Customs under Section 104 of the Customs Act, cannot be exercised after the Court has taken cognizance of the offence punishable under Section 135 of Customs Act. Investigation is over and the gold in question has already been confiscated and in this regard, an appeal is still pending before the Appellate Authority. The offence is economic and the applicant is liable to be given the benefit of [Arnesh Kumar vs. State of Bihar & another, [(2014) 8 SCC 273] , Satender Kumar Antil Vs. Central Bureau of Investigation and another, 2022 10 SCR 351 and V. Senthil Balaji Vs. State represented by Deputy Director and Others reported in (2024) 3 SCC 51. In the aforesaid judgment, it has clearly been mentioned that any offence which is triable by Magistrate and in which punishment of less than seven years is given and when during the investigation, the prosecution does not seek custody of the accused, after the Court has taken cognizance, there is no need to arrest.

4. To bolster her contentions, counsel for the appellant has placed reliance in the case of *Tarsem Lal Vs. Directorate of Enforcement* reported in *2024 SCC OnLine SC 971*, whereby it has been held that after taking cognizance of the offence by the Special Court, the officers and other authorities under the



provisions of Prevention of Money Laundering Act, cannot exercise the powers of arrest of the accused persons. The applicant is having no role in the offence and vehicle was registered in the name of brother of the applicant. It is admitted fact that the applicant has not appeared before the Court of Magistrate as he is apprehending his arrest, but now, he is ready to co-operate with the investigation as well as in trial. The final conclusion of the trial is likely to take sufficient long time. Therefore, it has been prayed that the applicants may be released on anticipatory bail.

5. Learned counsel for the respondent has vehemently objected the matter and submitted that the applicant is very much involved in the present crime. He is one of the mastermind and kingpin of the case. He has contended that the scope and ambit of Section 483 of BNSS, is to examine the entire case law while giving protective orders by the Division Bench judgment of High Court of M.P. in the case of **Kishore Meena Vs. Union of India and others** passed in M.Cr.C. No. 45420/2022 on 05.01.2023. He has also placed reliance upon the judgment of **Union of India Vs. Padam Narain Aggarwal** reported in (2008) 13 SCC 305. The applicant cannot be given the benefit of anticipatory bail because he did not join the investigation in spite of repeated summons issued to him. The applicant is also having criminal history of same nature. On these grounds, anticipatory bail should not be given to the applicant.

6. In reply, learned counsel for the applicant has stated that so far as the previous criminal antecedents are concerned, neither any order nor any document has been filed in this behalf. Be that as it may, on the basis of having criminal antecedents, he cannot be debarred to get the benefit of statutory provisions of anticipatory bail.



7. Heard learned counsel for both the parties and perused the case diary.

8. Certainly, in this case, the vehicle used in the crime, was in the name of applicant's brother Gourav Garg, only on the basis of that ground, the gravity of the offence cannot be mitigated. Actually, as per the allegation made in the case diary, there are evidence wherein allegations of committing offence, are prima facie emerging against the applicant.

9. So far as the law laid down in the case of **Tarsem Lal (supra)** is concerned, since the applicant has not cooperated in the investigation proceeding then he cannot be given any benefit in view of the law laid down in **Tarsem Lal (supra)**. So far as the law laid down in the cases of **Arnesh Kumar (surpa)** and **Satender Kumar Antil (supra)** is concerned, the law laid down in **V. Senthil Balaji (supra)**, by Hon'ble the Apex Court, it is held that the said law can not be applied to certain categories of offences, including economic offences, but only to minor offences under the Penal Code, 1860.

10. On this aspect, the Hon'ble Apex Court in the case of **Union of India Vs. Padam Narain Aggarwal and others, (2008) 13 SCC 305**, has held as under :-

"26. Section 438 of the Code makes special provision for granting 'anticipatory bail' which was introduced in the present Code of 1973. The expression ('anticipatory bail') has not been defined in the Code. But as observed in Balchand Jain v. State of M.P., (1976) 4 SCC 572, anticipatory bail means a bail in anticipation of arrest. The expression 'anticipatory bail' is a misnomer inasmuch as it is not as if bail presently granted in anticipation of arrest. Where a competent court grants 'anticipatory bail', it makes an order that in the event of arrest, a person shall be released on bail. There is no question of release on bail unless a person is arrested and, therefore, it is only on arrest that the order granting anticipatory bail becomes operative.

27. It was also observed that the power of granting 'anticipatory bail' is extraordinary in character and only in exceptional cases where it appears that a person is falsely implicated or a frivolous



case is launched against him or "there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail" that such power may be exercised. Thus, the power is 'unusual in nature' and is entrusted only to the higher echelons of judicial service, i.e. a Court of Session and a High Court."

11. Further, the Hon'ble Apex Court in the case of **Jai Prakash Singh vs. State of Bihar and others [2012 (4) SCC 379]** while canceling the anticipatory bail of the applicant therein so granted concerned High Court, has clearly observed that:-

"13.....The anticipatory bail being an extraordinary privilege should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after proper application of mind to decide whether it is a fit case for grant of anticipatory bail.

21.....The court may not exercise its discretion in derogation of established principles of law, rather it has to be in strict adherence to them. Discretion has to be guided by law; duly governed by rule and cannot be arbitrary, fanciful or vague. The court must not yield to spasmodic sentiment to unregulated benevolence. The order dehors the grounds provided in Section 438 Cr.P.C. itself suffers from non- application of mind and therefore, cannot be sustained in the eyes of law."

12. So far as the law settled in the case of **Kishore Meena (supra)** is concerned, the facts of this case are different with regard to the factual matrix of this case. Principles laid down in the aforesaid law are already followed by this Court.



13. In view of the aforesaid facts and circumstances of the case, and also looking to the nature of the allegations and the settled proposition of law laid down by Hon'ble Apex Court in the case of **Jai Prakash Singh (supra) & Union of India Vs. Padam Narain Aggarwal (supra)** as well as the factual scenario of the case, at this stage, without expressing any opinion on the merits of the case, no case for grant of anticipatory bail is made out. Hence, the application is liable to be and is hereby rejected.

(PREM NARAYAN SINGH)
JUDGE

Vindesh