

SUPREME COURT OF INDIA

Union of India

Vs.

Yusuf Razak Dhanani

CrI.A.No.1123 of 2003

(N. Santosh Hegde and B. P. Singh JJ.)

09.09.2003

ORDER

1. Heard learned counsel for the parties.

2. Leave granted.

3. Apprehending an arrest by the appellants for an offence under S. 104 of the *Customs Act, 1962*, the respondents moved an application under S. 438 of the Code of Criminal Procedure seeking anticipatory bail before the High Court of Judicature at Bombay. The said application came up before the Vacation Bench of the High Court on 2-1-2002 when the High Court granted circulation immediately for the next day. The appellants contend that a copy of the application was served on the second appellant at about 3.30 p.m. on 2-1-2002 and the matter was taken up for hearing by the Court on 3-1-2002. The appellants also contend that on behalf of the second appellant a prayer was made for grant of sometime to file an affidavit-in-reply by giving an undertaking to the Court not to arrest the petitioners before the High Court (respondents herein) in the meanwhile. The appellants further submitted that they brought to the notice of the High Court incriminating evidence against the respondents. However, the High Court by its order dated 3-1-2002 itself allowed the petition and granted anticipatory bail on certain terms and conditions.

4. It is against the said impugned order of the High Court the appellants are before us.

5. On behalf of the respondents it is submitted that appellants had sufficient notice of the application filed by them since in a connected matter the same Court had already granted bail hence they had knowledge that an anticipatory bail on behalf of these respondents also would be moved. They also contended learned counsel for the appellants did not seriously oppose the application therefore no complaint could be made by the appellants at this stage against the grant of anticipatory bail to them. They also submitted that so far as first respondent is concerned he was subsequently detained under a preventive detention law and has completed the said period of detention and he has been regularly co-operating with the investigating agency hence there may not be any need at all for his custodial interrogation. It was also

argued that the second respondent is a lady who was not at all involved in the business of the firm hence her custodial interrogation is also wholly unnecessary. Similar argument has been advanced on behalf of 3rd respondent. Learned counsel appearing for the respondent further argued that the officials of the Directorate of Revenue Intelligence (2nd appellant herein) have no authority in law to seek custodial interrogation therefore the above appeal ought to be dismissed.

6. We are not inclined to go into the merits of the claim of the parties to grant or not to grant anticipatory bail in this case. After hearing the arguments of the parties, we think it appropriate to dispose of this appeal solely on the ground that the procedure adopted by the High Court was not correct on facts and circumstances of this case. It is to be noted that a copy of the petition for grant of anticipatory bail was admittedly served on the 2nd appellant only in the afternoon of 2-1-2002. Though the respondents herein has denied that learned counsel for the 2nd appellant had sought time before the High Court, we do not find any such specific denial in the counter-affidavit here. That apart, we think it highly improbable that the learned counsel for the 2nd appellant would have agreed to argue the matter without filing a proper objection to the bail application. We also notice from the record that the 1st respondent was not even in India on that day when the application for bail was granted and an undertaking was also offered not to arrest the respondents till the High Court passed the order. In spite of the same, the anticipatory bail application was decided by the High Court on the very next date observing that : "Obviously this case is pertaining to examination of documents and, therefore, this Court does not find that custodial interrogation is necessary." We think such a finding could have been arrived at only after considering the objections if any filed by the Department which in this case the Department did not have an opportunity to file. Even the argument that the learned counsel for the Department had no objection for the grant of bail also cannot be accepted because in this regard this is what the Court has observed in the impugned order: "As there is no objection for granting the anticipatory bail to applicant Nos. 2 and 3 keenly, their case would be totally different." (Emphasis supplied). From this we are unable to come to the conclusion that learned counsel for the 2nd appellant did not have any objection at all because in the eye of law there is either an objection or no objection at all and there is no such thing as keen, weak, or strong objection.

7. Since we are satisfied that while deciding the applicant for grant of anticipatory bail the investigating agency concerned has not been given reasonable time to file its objections, this appeal has to be allowed and the matter be remanded to the High Court for fresh consideration after hearing both the parties. We, however, note the argument addressed on behalf of the respondents that the 1st respondent has been co-operating with the investigating agency, as also the argument that the appellants have no authority in law to seek custodial interrogation the application for grant of anticipatory bail ought to be granted. We leave open this question to be decided by the High Court. We also leave open the question whether at this distance of time there is any need at all for the investigating agency to arrest the respondents.

8. Thus leaving open all questions on merits, we set aside the order of the High Court and remand the matter to the High Court for fresh disposal.

9. Since the learned Judge who made the impugned order has already expressed his views on the merits of the case we think it appropriate and in the interest of justice that this matter should be heard and disposed of by some other Bench of the High Court. Therefore, we request the Hon'ble Chief Justice to place this matter for final disposal before a Bench other than the one which made the impugned order.

The appeal is allowed.

Appeal allowed.