

Chattisgarh High Court

Vijay Baid vs Assistant Director on 7 July, 2021

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HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 355 of 2021

Reserved on : 01.07.2021

Pronounced on : 07.07.2021

1. Vijay Baid, S/o Shri Shantilal Baid, Aged About 38 Years, R/o Kuwan Chowk, In Front of Old Kanji House, Rajnandgaon (C.G.)- 491441.
2. Gautam Baid, S/o Shri Mahendra Kumar Baid, Aged About 28 Years, R/o Chawkhadiya Para, Rajnandgaon (C.G.) - 491441.
3. Sushil Kumar Jain, S/o Shri Suresh Kumar Jain, Aged About 42 Years, Permanent R/o Sauner, Nagpur, Currently Residing at Chawkhadiya Para, Rajnandgaon (C.G.) - 491441.

---- Petitioners

Versus

Assistant Director, Directorate of Revenue Intelligence, Government of India, Raipur Regional Unit 30, Panchsheel Nagar, Civil Lines, Raipur (C.G.) - 492001.

---- Respondent

For Petitioners : Mr. Shashank Thakur, Advocate. For Respondent : Mr. Ramakant Mishra, Astt. S.G.

Hon'ble Shri Justice Narendra Kumar Vyas CAV Order

1. The petitioners have filed this writ petition under Article 226 of the Constitution of India against the order dated 22.05.2021 (Annexure P/1) passed by the Chief Judicial Magistrate, Raipur (C.G.) in Crime No. 10/2021, by which the application for grant of interim bail filed by the petitioners, has been rejected.

2. The brief facts, as projected by the petitioners, are that on 11.05.2021, the petitioners moved an application for grant of interim bail for 90 days before Chief Judicial Magistrate, Raipur as per direction of Hon'ble the Supreme Court in matter of Suo Motu Petition (C) No. 01/2020 in Contagion of Covid 19 Virus in prisons for releasing them for 90 days looking to the present scenario of pandemic Corona (Covid-19) mainly contending that the petitioners are engaged in trading of gold and silver ornaments in shop owned by petitioner No. 1 situated at Rajnandgaon. Upon an intelligence input received by respondent authorities on 01.05.2021, the respondents seized certain amount of foreign origin gold bars from Ranjeet Maruti Phate and Jijoba Shankar Kadam at Raipur. It is alleged by the respondent authorities that as per the information provided by Ranjeet Maruti Phate and Jijoba Shankar Kadam, the delivery of seized gold was to be given to petitioner No. 3-

Shekhu @ Sushil Kumar Jain of Rajnandgaon and his accomplice/petitioner No. 2-Cheeku @ Gautam Baid, who had informed that they had come to take delivery of the seized gold upon instruction of petitioner No. 1- Vijay Baid. The respondent authorities had conducted search and seizure proceedings at residential/ business premises of the petitioners at Rajnandgaon, which continued from 01.05.2021 to 02.05.2021. The petitioners were arrested by respondent authorities at their office at Raipur on 03.05.2021 for alleged commission of offence under Section 135 of the Customs Act, 1962 (for short "the Act, 1962"). It was on the complaint of the petitioners before higher authorities of the respondents, the investigation agency had given the copy of search and panchnama as per order dated 22.05.2021 passed by Chief Judicial Magistrate, Raipur (C.G.).

3. The respondents have filed reply on 18.05.2021 (Annexure P/8) to the application dated 11.05.2021 filed by the petitioner for grant of interim bail mainly contending that the officers of Directorate of Revenue Intelligence (DRI) Raipur Unit has seized the foreign origin 116 bars gold from Ranjeet Maruti Phate and Jijoba Shankar Kadam. The value of 116 gold bars (13.530 Kg.) was Rs. 6,56,21,664/-. On seizure proceeding on 01.05.2021, as per information given by the accused persons, officers of DRI have conducted further action on 02/03.05.2021 in the premises of petitioner No. 1-Vijay Kumar Baid and seized 4.652 Kg. gold value of Rs. 2,25,63,782/-. They have also seized 4563 Kg. silver value of Rs. 30,80,32,626/-. They also seized unaccounted cash money of Rs. 32,35,100/-. The accused Ranjeet Maruti Phate and Jijoba Shankar Kadam have voluntarily accepted their guilt on the statement recorded as per Section 108 of the Act, 1962. After arrest, they have been sent to the court of Chief Judicial Magistrate, Raipur, who has given order for two days remand upto 05.05.2021 and thereafter, both accused persons have been sent to judicial custody till 18.05.2021. It is also submitted that the offence committed by them was within the category of smuggling as the foreign gold and silver has been smuggled to India without any valid document. The offence committed by them is also held to be an offence under provision of the Money Laundering Act, 2002 (for short "the Act, 2002") by Enforcement Directorate (ED), as such, the information in various departments is also being given. It is further submitted that the offence enumerated in the Act, 2002, the Customs Act has also been included in the schedule as per paragraph 29 Part-B as provided under Section 2(y) "schedule offence" of the Act, 2002 as the value involved in such case is more than Rs.1,00,000,00/-. It has also been found that the petitioners have sent money through Hawala. It is also serious economic offence. The huge quantity of material has been brought to the nation through smuggling. It is not only evacuation of taxes, but also amounts to hampering India's economic growth. it has also been found in the investigation that they are habitual criminals. The DRI has also issued notice to them for smuggling for which they have also been penalized. The learned Chief Judicial Magistrate may consider that the petitioners have committed economic offence which hampers the country's economic growth and would submit that the application filed by them be rejected.

4. Learned Chief Judicial Magistrate considering the submission of the parties vide impugned order dated 22.05.2021 has rejected the application of the petitioners for grant of interim bail. The findings recorded by the learned Chief Judicial Magistrate Raipur are extracted below:-

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gS] ,slh n'kk esa vkosndx.k@vfHk;qDrx.k dks varfje tekur dk ykHk fn;k tkuk mfpr
izdV ugha gksrkA QyLo:i vkosndx.k@vfHk;qDrx.k fot; cSn] lq'khy dqekj tSu] xkSre
cSn dh vksj ls izLrqr varfje tekur vkosnu i= fujLr fd;k tkrk gSA "

5. This impugned order is being challenged by the petitioners before this court by filing Writ Petition (Criminal) under Article 226 of the Constitution of India mainly contending that in view of the judgment rendered by Hon'ble the Supreme Court in *Suo Motu Writ Petition (C) No. 01/2020* on 07.05.2021 and the recommendation made by the High Power Committee, they are entitled for grant of interim bail for 90 days. It is prayed that this writ petition may be allowed and the petitioners may be granted interim bail for 90 days.

6. On the other hand, learned Assistant Solicitor General for respondent would submit that the petitioners are not entitled to get protection of interim bail as they have not been filed regular bail application under Section 437 & 439 of the Cr.P.C., therefore, the interim bail application is also not maintainable. He would further submit that there is a remedy available under various provisions of Cr.P.C, therefore, neither the interim bail application filed before the trial Court nor the present petition is maintainable. Apart from the offence under Section 135 of the Customs Act, 1962, further investigation for various offences under various Acts has also been initiated or likely to be initiated. He would further submit that as per notification dated 07.03.2002, the officers of Directorate of Revenue Intelligence (DRI) will be appointed as Customs Officers and offence committed by the petitioners is severe economical offence and the investigation is pending. In fact, they are not cooperative, they may influence the other witnesses, therefore, they are not entitled for grant of interim bail. He would further submit that the Hon'ble Supreme Court has also held that economic offence is severe than the offence of murder as the economic offence can affect the economic condition of whole nation and prayed for rejection of this writ petition.

7. The core issue involved in this case is whether the petitioners are entitled to get protection as per guidelines issued by the High Power Committee or not, which has been issued in pursuance of direction of the Hon'ble Supreme Court on 07.05.2021.

8. I have heard learned counsel for the parties and perused the records annexed with the petition as well as the case diary submitted by learned counsel for the respondent in sealed envelope.

9. Before advertng to the question posed by learned counsel for the petitioners, it will apt to reproduce the relevant recommendation made by the High Power Committee on 12.05.2021 as well as section 135 of Custom Act which read as under.

"Criteria for release of Under trial prisoners: "..... The under trial prisoners, who are satisfying the following criteria shall be released:

3. Under Trial prisoners (UTPs)/ Remand Prisoners (with respect to whom, charge sheet are yet to be filed), who are in custody for 15 days or more, facing trial in a case which prescribes a maximum sentence of 07 years or less;

4. Under trial prisoners (UTPs), who are senior citizens of 60 or more than 60 years of age and are in custody for three months or more, facing trial in a case which prescribes a maximum sentence of 10 years or less"

"It has further been resolved that following category of UTPs, even if falling in the above criterion should not be consider:-

5. Those under trial prisoners who are facing trial under Prevention of Corruption Act (PC Act)/ PMLA; and

6. Case investigated by CBI/ED/NIA/Special Cell, Crime Branch, SFIO, Terror related Cases, Riot cases, cases under Anti-National Activities and Unlawful Activities (Prevention) Act etc."

Section 135 of the Customs Act, which is as under:- "135. Evasion of duty or prohibitions.--[(1) Without prejudice to any action that may be taken under this Act, if any person--

(a) is in relation to any goods in any way knowingly concerned in misdeclaration of value or in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any prohibition for the time being imposed under this Act or any other law for the time being in force with respect to such goods; or

(b) acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111 or section 113, as the case may be; or

(c) attempts to export any goods which he knows or has reason to believe are liable to confiscation under section 113; or

(d) fraudulently avails of or attempts to avail of drawback or any exemption from duty provided under this Act in connection with export of goods, he shall be punishable,--

(i) in the case of an offence relating to,--

(A) any goods the market price of which exceeds one crore of rupees; or (B) the evasion or attempted evasion of duty exceeding thirty lakh of rupees; or (C) such categories of prohibited goods as the Central Government may, by notification in the Official Gazette, specify; or (D) fraudulently availing of or attempting to avail of drawback or any exemption from duty referred to in clause (d), if the amount of drawback or exemption from duty exceeds [fifty lakh] of rupees, with imprisonment for a term which may extend to seven years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for less than one year;

(ii) in any other case, with imprisonment for a term which may extend to three years, or with fine, or with both.] [(2) If any person convicted of an offence under this section or under sub-section (1) of section 136 is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to seven years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court such imprisonment shall not be for less than 3[one year].] [(3) For the purposes of sub-section (1) and (2), the following shall not be considered as special and adequate reasons for awarding a sentence of imprisonment for a term of less than [one year], namely:--

(i) the fact that the accused has been convicted for the first time for a reference under this Act;

(ii) the fact that in any proceeding under this Act, other than a prosecution, the accused has been ordered to pay a penalty or the goods which are the subject matter of such proceedings have been ordered to be confiscated or any other action has been taken against him for the same act which constitutes the offence;

(iii) the fact that the accused was not the principal offender and was acting merely as a carrier of goods or otherwise was a secondary party to the commission of the offence;

(iv) the age of the accused.]"

10. From perusal of Section 135 of the Act, 1962, it is evident that the punishment for committing offence under Section 135 of the Act, 1962, is upto seven years. Learned counsel for the petitioners relying upon the provisions of this Act, would submit that as per Section 135 (1)(b) of the Act, 1962, the case of the petitioners is squarely covered in clause 3 of recommendation issued by the High Power Committee, which provides that the under trial prisoners (UTPs)/ Remand Prisoners (with respect to whom, charge sheet are yet to be filed), who are in custody for 15 days or more, facing trial in a case which prescribes a maximum sentence of 7 years or less shall be released, whereas it reflects from clause 5 & 6 of the recommendation as mentioned above that person belong to the under trial prisoners category even if following in the above criterion should not be considered for release. The under trial prisoners, who are facing trial under Prevention of Corruption Act/ Prevention of Money Laundering Act, 2002 and cases investigate by CBI/ED/NIA/ Special Cell, Crime Branch, SFIO, Terror related cases, Riot cases, under Anti-National Activities and Unlawful Activities (Prevention) Act etc., are not entitled to be released.

11. From perusal of record and the material collected in case diary submitted by the investigating authority, prima facie shows the involvement of the petitioners in alleged offence of smuggling of gold. The petitioner No. 1- Vijay Baid is also facing proceeding under Section 124 of the Customs Act by the Directorate of Revenue Intelligence, Lucknow Zonal Unit, Lucknow dated 22.02.2020 and for

that the investigation is under progress. The show cause notice has been issued without prejudice to any other action that may be taken against the persons/ persons under any other law for the time being in force including the Customs Act, 1962. This prima facie establishes that the petitioners are habitual offenders. The diary statement of the witnesses also prima facie indicates that the petitioners are very much involved in smuggling of gold and silver, which is injurious to economic growth of the nation. The case diary further reflects that investigation is in a primary stage. It may take some time and their custodial remand is very much required for further investigation. The investigation has not been completed and since they are big financial resource persons, possibility of influencing the witnesses, cannot be ruled out. The investigation with regard to their involvement in other offence related to economic offence is also to be investigated.

12. Hon'ble the Supreme Court in recent judgment passed on 19th March, 2021 in case of The State of Kerala Vs. Mahesh 1, while examining the order passed by the Supreme Court in Suo Moto Writ Petition (C) No. 01/2020 in para 38 held the orders of this Court are not to be construed as any direction, or even observation, requiring release of under-trial prisoners charged with murder, and that too, even before investigation is completed and the charge-sheet is filed. Para 37 & 38 of the judgment are reproduced as under:-

"37. There can be no doubt that the outbreak of the novel COVID-19 pandemic and its spread has been a matter of serious public concern. The virus being highly infectious, precautions to prevent spread of infection to the extent possible are imperative. In Suo Motu Writ Petition (Civil) No.1 of 2020 In Re : Contagion of Covid 19 Virus In Prisons, this Court expressed concern over the possibility of spread of COVID-19 amongst prisoners lodged in overcrowded correctional homes and accordingly issued directions from time to time, directing the authorities concerned to inter alia take steps as directed by this Court, to minimize the risk of spread of COVID amongst the inmates of correctional homes. This Court also directed that a High Powered Committee be constituted by the States and Union Territories to consider release of some prisoners on interim bail or parole during the Pandemic, to prevent overcrowding of prisons.

38. It appears that the High Court has completely mis- appreciated the object, 1 Criminal Appeal No. 343 of 2021 scope and ambit of the directions issued by this Court from time to time in In Re : Contagion of Covid 19 Virus In Prisons. This Court did not direct release of all under-trial prisoners, irrespective of the severity of the offence. After hearing the learned Attorney General of India, Mr. Venugopal, the Amicus Curiae appointed by this Court, Mr. Dushyant Dave and other Learned Counsel, the States and Union Territories were directed to constitute a High Powered Committee to determine which class of prisoners could be released on parole or interim bail for such period as might be thought appropriate. By way of example, this Court directed the States/Union Territories to consider release of prisoners convicted of minor offences with prescribed punishment of seven years or less. The orders of this Court are not to be construed as any direction, or even observation, requiring release of under-trial prisoners charged with murder, and that too, even before

investigation is completed and the chargesheet is filed. The Respondent Accused, it is reiterated, is charged with murder in the presence of an eye witness, and the impugned order granting bail was filed even before the chargesheet was filed. The Chargesheet appears to have been filed on 01.01.2021. Moreover the Respondent Accused had been absconding after the incident."

13. The possibility of the accused /petitioners absconding or otherwise defeating or delaying the course of justice, reasonable apprehension of witnesses being threatened or influenced or of evidence being tempered, therefore, the petitioners are not entitled to get benefit from order of the Supreme Court and the recommendation of the High Power Committee.

14. The Chief Judicial Magistrate, Raipur has not committed any error in rejecting the application of the petitioners for grant of interim bail, warranting interference of this Court.

15. The observation made by this Court is only with regard to consideration of grant of interim bail. The learned trial Court shall not be influenced by any of the observations made by this Court while deciding the regular bail application, if any, is filed or conducting the trial.

16. In view of the above, the present writ petition sans merit, is liable to be and is hereby dismissed.

17. The case diary of this case is returned to learned Assistant Solicitor General in sealed envelope.

Sd/-

(Narendra Kumar Vyas) Judge Arun