

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on : 04.10.2021**
Pronounced on : 10.01.2022

+ **CRL.M.C. 2017/2020**

AIR CUSTOMS Petitioner
Through: Mr. Satish Aggarwala, Sr. SPP and
Mr. Gagan Vaswani, Advocate.
versus
SHAIL ANAND AND ANR. Respondents
Through: Mr. Akshay Anand, Advocate with
Ms. Prarthana Gund, Ms. Archana
Sharma and Mr. Tushar Anand,
Advocates.

+ **CRL.M.C. 2019/2020 and CRL. MA. 15157/2020**

AIR CUSTOMS Petitioner
Through: Mr. Satish Aggarwala, Sr. SPP and
Mr. Gagan Vaswani, Advocate.
versus
ANKIT MADAN AND ANR. Respondents
Through: Mr. Sunil K. Mittal, Advocate.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. These are the petitions filed by the petitioner/Customs department under section 482 Cr.P.C. seeking setting aside of order dated

14.10.2020 by way of which the respondents i.e. Shail Anand and Tarush Anand in Crl. M.C. 2017/2020 and Ankit Madan and Anil Madan in Crl. M.C. 2019/2020 were granted bail for the offences under sections 132 and 135 of Customs Act, 1962.

2. Brief facts of the case are that on the basis of specific intelligence, the officers of Air Customs had recovered and seized 04 watches valued at Rs. 51,55,887/- from the possession of the respondents, on their arrival at T-3, New Delhi by Flight No. UK 224 dated 23.09.2020 from Dubai to Delhi on 24.09.2020. In their respective voluntary statements tendered under Section 108 of Customs Act, 1962 the persons namely Shail Anand, Tarush Anand, Ankit Madan and Anil Madan inter-alia admitted the recovery, seizure and other incriminating facts. Thereafter, FIR was registered and investigation was taken up.
3. I have heard learned counsel for the petitioner, learned counsel for the respondents and also perused the reply filed on behalf of respondents.
4. It is submitted by the counsel for the petitioner that the learned CMM while granting bail to the respondents did not deal with all the submissions made on behalf of the petitioner department and none of the judgments cited by the petitioner department were taken into consideration. It is further submitted that learned CMM did not appreciate that watches which are case property in the present case are covered by Section 123 of the Customs Act, 1962 and also the plea of

the petitioner department that investigation was going on and grant of bail at the initial stage of investigation particularly in economic offences had been deprecated. It is further submitted that the respondents are not only involved in smuggling of wrist watches but are also part of the hawala racket which is a case of international ramification. Lastly, it is prayed that bail granted to the all the respondents vide order dated 14.10.2020 be cancelled.

5. On the other hand, it is submitted by learned counsel for the respondents that there are no malafides in the Impugned Order dated 14.10.2020 passed by learned CMM. It is further submitted that respondents have already deposited the amount as per direction of the learned CMM, towards the Customs duty. It is further submitted that the watches seized at the airport had already been released vide order dated 16.07.2021 passed by customs authority and the penalty imposed on the respondents have already been paid by them. It is submitted that there are two essential conditions mandatory for the maintenance of bail being granted to accused, first, that he shall be available for the trial proceedings and he shall not flee from the hands of justice and second that accused will not tamper with the evidence. It is further submitted that none of the condition has been violated by the respondents also there are no allegations against the respondents that they ever tried to tamper with the evidence. It is further submitted that there is no likelihood of tampering with the evidence and accordingly

the learned CMM has rightly granted bail to the respondents after duly considering the facts of the case. It is further submitted that the cancellation can only be done in cases of supervening circumstances which are totally lacking in the present case.

6. In this regard, Three Judges Bench of Hon'ble the Supreme Court in *State (Delhi Administration) vs. Sanjay Gandhi* 1978(2) SCC 411 has made the following elemental distinction in defining the nature of exercise while cancelling bail:

- a. *"Rejection of bail when bail is applied for is one thing; cancellation of bail already granted is quite another. It is easier to reject a bail application in a non-bailable case than to cancel a bail already granted in such a case. Cancellation of bail necessarily involves the review of a decision already made and can by and large be permitted only if, by reason of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial."*

7. Further, the Hon'ble Supreme Court in *Dolat Ram v. State of Haryana* (1995) 1 SCC 349 has also laid down guidelines to Courts while deciding the question of **cancellation of bail already granted. Para 4 of judgment reads as follows:**

“4. Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner... However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a non bailable case in the first instance and the cancellation of bail already granted.”

8. It is settled that once bail granted should not be cancelled in a mechanical manner without there being any supervening circumstances which are not conducive to fair trial. It cannot be cancelled on a request from the side of the complainant/investigating agency unless and until

it is established that the same is being misused and it is no longer conducive in the interest of justice to allow the accused any further to remain on bail. No doubt, the bail can be cancelled only in those discerning few cases where it is established that a person to whom the concession of bail has been granted is misusing the same.

9. In the instant case, there are no allegations of any tampering with the evidences. There are also no allegations that the respondents are at flight risk or there is any likelihood of absconding. The petitioner department has not been able to make out a case of supervening circumstances on the basis of which the bail granted to the respondents should be cancelled and nothing has been brought on record to show that the respondents have towering personalities that their mere presence out on bail would in any manner thwart the further investigation (if any) of the case or that they are in any manner threat to the fair trial of this case. Nothing has been brought on record that the respondents in any manner have violated the terms and condition of the order granting them bail.
10. It is pertinent to mention here that watches which were seized at the airport had already been released vide order dated 16.07.2021 passed by customs authority and also the penalty which was being imposed on the respondents have already been paid by them. Petitioner department also failed to answer that what purpose would be served if the bail is

cancelled and what further enquiry is to be done after cancellation of bail by taking them into custody. So, I see no reason for cancellation of bail of respondents in the present case. Therefore, relying upon the judgments *State (Delhi Administration) vs. Sanjay Gandhi (supra)* & *Dolat Ram v. State of Haryana (supra)* and also that all the facts and circumstances, required for an order of cancellation of bail to be passed are missing in the present case, the present petitions along with pending applications, are dismissed.

RAJNISH BHATNAGAR, J

JANUARY 10, 2022

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