

Sh. Abhishek Kumar  
Additional Chief Judicial Magistrate-01  
02, Ground Floor, Main Building  
Patiala House Courts,  
New Delhi

DRI vs. Yash Tekwani

05.10.2024

The undersigned is looking after the work of the court of Ld. CJM on account of the promotion of the PO and of ACJM-02 on account of leave.

Present:- None for the Department.

None for the accused.

1. Matter is listed for orders on the bail application.
2. It has been argued on behalf of the accused that he has been falsely implicated in the present case for the smuggling of the e-cigarettes and selling of the smuggled e-cigarettes. Further, the premises of the accused was searched at Chandan Hola, Chatterpur by the DRI officials and the accused was not allowed to contact the legal counsel and was coerced into signing blank pages under threat of arrest. Further, the accused was compelled to make statements under immense pressure and duress.
3. It has been further stated that there is no requirement of the accused to be kept behind the bars who is in custody since 24.08.2024 and keeping the accused behind the bars till the starting of the trial is against the fundamental right to liberty under Article 21 of the Constitution of India and prolonged incarceration will only act as a punitive punishment without any trial. Furthermore, the prosecution has seized all the alleged goods, recorded the statement of the witnesses and the investigation is almost complete and there is no possibility that the accused will tamper with the evidence or

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will abscond as he is a permanent resident of Delhi and is the sole bread earner of his family having deep roots in the society. Also, nothing is to be recovered from the possession of the accused and the recovery done by the DRI from the premises is not under the control or ownership of the accused. The accused has been relied upon number of judgments in support of his contention and has also raised the contention that the DRI does not have the jurisdiction to investigate the offence under the E-cigarettes Act.

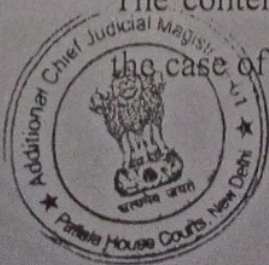
4. In reply to the application, the Department has opposed the bail application citing the gravity of the matter and the fact that the statement of the accused recorded under Section 108 of the Customs Act shows his involvement in the commission of the crime and the DRI has the jurisdiction to investigate the matter of the e-cigarettes which are the smuggled goods and are the prohibited items.

5. I have perused the record and the reply filed by the department.

6. There is no doubt that statement under Section 108 of the Customs Act is a significant statement and is relevant also. However, the same is not sufficient to decide the bail, for which all the factors are to be taken into consideration. It has been held in number of cases by the Apex Court that economic offences/gravity of the offence cannot be the sole criteria to deny the bail and there is nothing under the law, which bars the grant of bail in such cases.

The contention whether the DRI has the jurisdiction to investigate the case of the smuggling of the e-cigarettes is a point which is not

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required to be considered during the hearing of the bail application and is a matter to be taken up before the appropriate forum or during the trial if the complaint is filed. As of now, it is to be seen whether the further custody of the accused is required or not. In my opinion, the recovery has already been effected and the accused is in custody since 24.08.2024, any further custody of the accused is not required in the present case in the light of the judgments of the Apex Court in case titled as Sanjay Chandra vs. CBI and Satinder Kumar Antil, wherein time and again it has been reiterated by the Apex Court that bail is the rule and jail is the exception and the accused cannot be kept behind the bars solely on the basis that an offence has been committed as the same acts as punitive punishment which is not the mandate of the law while considering the bail applications.

In view of the above, the bail application of the accused is allowed.

Accused is admitted to bail in the sum of Rs. 1,00,000/- with the surety of like amount subject to the following conditions:

1. The accused shall not leave the country without the prior permission of the court and the passport, if not already seized, be deposited in the court.
2. The accused shall not commit or indulge in the similar offence again.
3. The accused shall furnish his permanent address and contact number.
4. The accused shall join the investigation as and when directed by

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the IO.

-4-

Bail application disposed off.

Copy of this order be given dasti, as prayed for.



SD  
(Abhishek Kumar)  
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New Delhi

W/H Dasti