

Sankarlal Saraf Vs. State of West Bengal

LegalCrystal Citation : legalcrystal.com/872716

Court : Kolkata

Decided On : Jul-01-1985

Reported in : 1986(9)ECC85,1993(67)ELT477(Cal)

Judge : N.G. Chaudhuri and ;Gobinda Chandra Chatterjee, JJ.

Acts : [Customs Act, 1962](#) - Sections 104 and 135; ;Foreign Exchange Regulations Act, 1973 - Section 35; ;Code of Criminal Procedure (CrPC) - Sections 167, 439 and 482

Appeal No. : Criminal Misc. No. 687 of 1985

Appellant : Sankarlal Saraf

Respondent : State of West Bengal

Advocate for Def. : S.D. Banerji, ;Jatin Ghosh, ;Sunil Chatterjee and ;R.B. Mahato, Advs.

Advocate for Pet/Ap. : Bholanath Sen, ;Dilip Kr. Dutta, ;Anindya Mitra, ;Bhaskar Sen and ;Ashok Ganguly, Advs.

Judgement :

ORDER

N.G. Chaudhuri, J.

1. Sankarlal Saraf, the petitioner before us is alleged to have committed offences punishable under Section 135 of the [Customs Act, 1962](#) by importing huge quantities of stainless steel from U.S.A. and other countries by under-invoicing the consignments and thereby indulged in smuggling as defined in the Customs Act. The period of activities of smuggling is alleged to be from 1981-1983. It is alleged that he has wide connections and has a large number of accessories. The Customs Authorities had suspicions regarding the nature of smuggling activities carried on by Sankarlal Saraf only recently for which litigations before various forums are continuing. However, to come to grips with the relevant facts we may say that the Assistant Collector, Customs, Calcutta produced him in custody for offences alleged under the Customs Act before the learned C.M.M., Calcutta on 24-4-1985 and the learned Advocate for Customs Authorities prayed for rejection of the prayer for bail and remand of Sankarlal to jail custody and also made further prayer for permission to interrogate Sankarlal in jail. The learned C.M.M., Calcutta by his order of the same date directed the accused to be remanded to jail custody till 2-5-1985 and expressly ordered that the I.O. may interrogate him in jail. Aggrieved with that order the accused has come up before us with an application under Section 439 read with

Section 482 of the Cr. P.C. At the time of hearing of the application for the purpose of an interim order Mr. Bholanath Sen, learned Counsel for Sankarlal Saraf cited before us a Division Bench decision of the Delhi High Court in *Dalam Chand Baid v. Union of India* reported in 1982 Criminal Law Journal 747 and contended that under the Customs Act a magistrate had no power to order the accused to be taken in jail custody. Relying on the decision principally, although we did not cite the decision in our order, we took a view that the learned Magistrate was wrong in passing the order. However, we did not take a final decision. We granted Sankarlal Saraf an interim bail subject to the condition of his furnishing sureties of Rs. 10,000/- with two sureties of Rs. 5,000/- each to the satisfaction of the learned C.M.M., Calcutta and ordered issuance of notice on the Customs Authorities for entering appearance, and they have filed an affidavit-in-op-position. We may add subsequent to our interim order of bail with the consent of the learned Advocate for the Customs Authorities Sankarlal Saraf was permitted to continue on bail with slight relaxation of the conditions of bail. The matter is being taken up for hearing today.

2. Mr. Jatin Ghosh, learned Advocate on behalf of the Customs Authorities argued elaborately regarding the gravity and magnitude of the offences and its ramifications adverse to the economy of the country and various other things. We need not discuss of those features. Coming to the points of law Mr. Jatin Ghosh contends that the Delhi High Court Division Bench case on which Mr. Sen relied on was not under the Customs Act of 1962 and the said decision was on the Foreign Exchange Regulations Act, 1973. Mr. Jatin Ghosh concedes that provisions of Section 35 of the last-mentioned Act are almost similar to provisions of Section 104 of the Customs Act. After making above concession Mr. Ghosh argues that the Delhi High Court decision cannot apparently be an authority on a case under the Customs Act. Further, he points out that in the Delhi case there was an application for bail and refusal of the prayer, but in the present case there was no formal application for bail or refusal of the prayer by the learned C.M.M. Next he points out that for very cogent reasons Kerala High Court refused to accept the reasons given by their Lordships of the Delhi High Court in their decision. In this connection Mr. Ghosh refers to the case of the Superintendent of Customs, C.I.U., Cochin v. P.K. Ummerkutty reported in 1983 Criminal Law Journal 1860 : 1986(23)ELT384(Ker) . Mr. Ghosh points out the Kerala High Court decision although of a single Judge is on Section 135 and 104 of the Customs Act and in these decisions for reasons given Delhi High Court decision in 1982 Criminal Law Journal 747 has been dissented from. He cites another Kerala High Court decision in *M.K. Ayoob and Ors. v. Superintendent, Customs, Intelligence Unit, Cochin and Another*, reported in 1984 Criminal Law Journal 949. This decision gives elaborate reasons why Section 167 of the Criminal Procedure Code is applicable to arrest under the Customs Act, this subject was discussed by their Lordships of the Delhi High Court in their decision. Mr. Ghosh also refers to a Division Bench decision of the Gujarat High Court in *N.H. Dave, Inspector of Customs v. Mohmed Akhtar Hussain Ibrahim Iqbal Kadar Amad Wagher (Bhatti) and Ors.*, reported in *Excise Law Times* : 1984(15)ELT353(Guj) . It has been held there that merely because Section 104 of the Customs Act of 1962 is silent as to how the Magistrate should deal with when the arrested person is brought before him, it cannot be said that he cannot pass any order in regard to the custody of arrested person because in such a situation, Section 104 would be meaningless and purposeless when arrest of a person who was guilty of an offence under the Customs Act cannot be affected.

3. Considering the various decisions cited above and the provisions of Section 104 of the Customs Act, we are convinced that whenever a Magistrate is expressly

authorised to grant bail to an accused he has by necessary implications the right to refuse bail and to order him to be taken into custody. The facts and circumstances of the case will determine which kind of custody it will be, police, jail or otherwise. However, we are now convinced that the order of the learned C.M.M. by which he ordered the accused to be taken into jail custody cannot be treated as illegal. In the fitness of things the accused should have through an Advocate filed an application for bail. So the interim order of bail we granted will continue to be operative till 8-7-1985 or before which date the accused petitioner will surrender in the court of the learned C.M.M., Calcutta and will offer himself to be taken in the jail custody, and he may simultaneously make an application for bail through an Advocate of his choice after giving notice of the application to the Customs Authorities and the date of hearing of the application. The learned C.M.M. will give the Customs Authorities opportunities to make their submissions. Subject to the above observations the case before us will be treated as disposed of on 8-7-1985. The learned C.M.M. may take into consideration the fact that the accused had been on interim bail for more than ten weeks and there is no allegation so far that he attempted to tamper with evidence.

LegalCrystal - Indian Law Search Engine - www.legalcrystal.com