

DIRECTORATE OF ENFORCEMENT

v.
ASHOK KUMAR JAIN
AND
VICE VERSA

JANUARY 8, 1998

[M.K. MUKHERJEE, S.P. KURDUKAR AND K.T. THOMAS, JJ.]

Foreign Exchange Regulation Act, 1973:

FERA violations—By a person with deterioration health—Custodial interrogation of—High Court imposed conditions that the Enforcement Directorate should approach Director, AIIMS to constitute a Board of Cardiologists and in case Board found custodial interrogation not feasible, Directorate should interrogate such a person under the care of doctors at AIIMS—Held: Modality stipulated by the Court for conducting such interrogation improper—Further, in such a case the authorities should be given freedom to chalk out necessary measures to protect the health of such a person.

Section 41—Seized documents—Retention of—Time limit for—Extension by Supreme Court Documents seized from premises of accused—Repeated summons issued to accused but instead of appearing he moved Sessions Court for anticipatory bail—By the time the matter of anticipatory bail came up before Supreme Court extended time limit for retention of documents expired—Consequently Enforcement Directorate disabled to use seized documents for questioning persons concerned resulting in futile interrogation of appellant—Held : In the circumstances of the case, as there was no lapse on the part of the officers of Directorate statutory time limit extended for a further period of six months in public interest by Supreme Court—Constitution of India, 1950, Art. 142.

Section 41—Seized documents—Retention of—Time limit for—Extension of—With consent of person from whose premises documents were seized Question left open.

The officials of the Enforcement Directorate under the Foreign Exchange Regulation Act, 1973 (FERA) conducted a raid in the residential

- A premises of the respondent and seized certain documents considered useful for unearthing large scale FERA violations Repeated Summons were issued to the respondent to appear before the Directorate for interrogation but instead of appearing the respondent moved the Sessions Court for anticipatory bail. In the application for anticipatory bail the respondent highlighted his deteriorating health as the main ground for granting him bail. However, the
- B Sessions Court dismissed the application.

- C The respondent moved the High Court challenging the aforementioned order. The High Court imposed a condition that the Enforcement Directorate should approach the Director, AIIMS to constitute a Board of Cardiologists to examine the respondent and in case the Board found custodial interrogation was not feasible, the officials should interrogate the respondent under the care of doctors at the AIIMS. Studded with such conditions the High Court modified the order of the Sessions Court. Hence this appeal.

- D On behalf of the appellant it was contended that conditions imposed by the High Court would render the interrogation ineffective and unfruitful; that since extended time limit under Section 41 of FERA for retaining the seized documents had expired, interrogation of the respondent would become completely futile if the Directorate was disabled to use the seized documents for questioning the persons concerned because the respondent did not avail himself for effective interrogation during the said period of retention of the
- E seized documents.

On behalf of the respondent it was contended that respondent would not ask for the return of the said seized documents even after expiry of the time limit.

- F Allowing the appeal, this Court

- G HELD: 1. No doubt investigating officials of the Enforcement Directorate are duty bound to bear in mind that the respondent has put forth a case of delicate health conditions. They cannot overlook it and they have to safeguard his health while he is in their custody. But to say that interrogation should be subject to the opinion of the Cardiologists of the AIIMS and that the officials of the Directorate should approach the Director of AIIMS to constitute a Board of Cardiologists to examine the respondent etc. Would considerably impair the efficient functioning of the investigating authorities under the Foreign Exchange Regulation Act, 1973 (FERA). The authorities should
- H have been given freedom to chalk out such measures as are necessary to

protect the health of the person who would be subjected to interrogatory process. They cannot be nailed to fixed modalities by the court for conducting interrogations. [61 D-F] A

2. The respondent's concession that he would not ask for the return of seized documents on the expiry of the time schedule may not help the Directorate because of the statutory limitation contained in Section 41 of FERA. Since the period fixed for return of the seized documents had expired for no lapse on the part of the officials of the Directorate, public interest should not suffer by non-utilization of the seized documents for interrogating the respondent. The said period is, therefore, extended for a further period of six months. [62 C-E] B C

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 22 of 1988 Etc.

From the Judgment and Order dated 10.9.97 of the Delhi High Court in Crl. M. (Main) No. 2362 of 1997. D

K.N. Bhatt, Additional Solicitor General, Arun Jaitley, Kapil Sibbal, V.K. Verma, Rajeev Sharma, K.A. Datta, R.K. Handoo, Gopal Jain, Ajay Kr. Yadav, K.V. Mohan and Ms. Rajani for the Appearing Parties.

The Judgment of the Court was delivered by E

THOMAS, J. Special leave granted. These two appeals are directed against an order passed by the Delhi High Court which interfered with the order passed by a Sessions Judge dismissing a petition filed by one businessman called Ashok Kumar Jain (who will be referred to as the respondent) for pre-arrest bail. F

Some officials of the Enforcement Directorate under the Foreign Exchange Regulation Act, 1973 ('FERA' for short) conducted a raid in the residential premises of the respondent on 4.1.1997 and seized certain documents which they considered very useful for unearthing instances of large scale FERA violations. The said raid was followed by a few other raids and the Enforcement Directorate (for convenience it is referred to as "the Directorate") has now started investigation into the alleged FERA violations against the respondent involving millions of US Dollars. Summons were issued to the respondent to appear before the Directorate for interrogation. On 5-1-1997 respondent left India. Though summons were repeated many times respondent did not H G

A reciprocate to any one of them and instead he moved the Sessions Court of Delhi for anticipatory bail. In the application (for anticipatory bail) he highlighted his deteriorating health condition as the main ground for granting him bail. However, the Sessions Court dismissed the application and in so doing learned Sessions Judge made the following observations:

B “Anticipatory bail definitely hamper the proper and effective investigation. Therefore, extra care and caution has to be taken while dealing with the application for grant of pre-arrest bail. The demand of an individual’s liberty has to be matched with the larger interest of the public and the State. For instance, in the instant case, there are

C allegations of clandestine siphoning of big amount of precious foreign exchange. Such an offence is against the whole nation. The investigators have to be given full freedom for investigation. The allegations against the petitioner being of very grave and serious nature, the grant of anticipatory bail to this accused will certainly hamper proper investigation. The need for providing medical care and

D attention to the petitioner, in view of his past medical history, will be taken care of by the department even by the jail authorities in the event of his arrest. Such assurances have been given by the department.”

E Respondent moved Delhi High Court challenging the aforementioned order. He made a strong plea for a pre-arrest bail order on the strength of medical reports obtained from his cardiologists. Learned single judge, though expressed his view in the order under challenge that the Directorate can arrest the respondent and carry out custodial interrogation, has passed a condition that such arrest shall be “subject to the opinion of the cardiologists of the

F All India Institute of Medical Sciences (AIIMS)”.

Learned single judge further observed that in case the Directorate considers custodial interrogation of the respondent necessary “it should approach the Director, AIIMS to constitute a Board of cardiologists to examine the respondent” and if the said Board reaches the opinion that custodial

G interrogation is not feasible “in that event it will be open to the officials to interrogate him under the care of the doctors at the AIIMS.” Studded with such conditions learned single judge modified the order of the Sessions Court. The Directorate has filed this appeal aggrieved by such conditions and the respondent filed the other appeal aggrieved by the refusal to grant

H anticipatory bail.

This is not a fit case for granting anticipatory bail to the respondent and the Sessions Court as well as the High Court have rightly declined to grant such pre-arrest bail order to the respondent. Hence we proceed to consider whether learned single judge of the High Court has gone wrong in imposing conditions on the Directorate regarding to manner in which interrogation of the respondent is to be modulated.

It is contended by Shri K.N.Bhat, learned Addl. Solicitor General, appearing for the Directorate, that the aforesaid conditions imposed by the High Court would render the interrogation ineffective and unfruitful. Shri Kapil Sibal and Shri Arun Jaitley, Senior Advocates (who argued for the respondent, separately under the two appeals) laid emphasis on the health aspect of the respondent who, it is said, is suffering from acute heart conditions. Papers prepared by cardiologists of the AIIMS have been produced to show that respondent has undergone a bypass surgery and other curative processes for eschemic heart disease.

We have noticed that learned Sessions Judge while dismissing the application for pre-arrest bail has taken due note of the aforesaid plea of the respondent and made necessary observations regarding the need to provide medical care and protection to the respondent in view of the medical reports. It cannot be contended, nor has it been contended before us, that respondent is immune from arrest on even interrogation simply on account of his physical conditions. No doubt investigating officials of the Directorate are duty bound to bear in mind that the respondent has put forth a case of delicate health conditions. They cannot overlook it and they have to safeguard his health while he is in their custody. But to say that interrogation should be subject to the opinion of the cardiologists of the AIIMS and that the officials of the Directorate should approach the Director of AIIMS to constitute a Board of cardiologists to examine the respondent etc. would, in our opinion, considerably impair the efficient functioning of the investigating authorities under FERA. The authorities should have been given freedom to chalk out such measures as are necessary to protect the health of the person who would be subjected to interrogatory process. They cannot be nailed to fixed modalities stipulated by the court of conducting interrogations. It is not unusual that persons involving themselves in economic offences, particularly those living in affluent circumstances, are afflicted by conditions of cardiac instability. So the authorities dealing with such persons must adopt adequate measures to prevent deterioration of their health during the period of custodial internment. Court would interfere when such authorities fail to adopt necessary measures.

A But we are not in favour of stipulating in advance modalities to be followed by the authorities for that purpose. According to us such anticipatory stipulations are interferences with the efficient exercise of statutory functions when dealing with economic offences. Hence learned single judge ought not have imposed such conditions on the Directorate.

B Learned Addl. Solicitor General invited our attention to Section 41 of the FERA which provides that the document seized can be retained only for a period of six months unless the Directorate extends the said period for a further period which shall not exceed six months. It is submitted that the Directorate has already extended the period of six months and even that
C extended period would expire on 4-1-1998. According to the learned Addl. Solicitor General interrogation of the respondent would become completely futile if the Directorate is disable to use the seized documents for questioning the persons concerned because respondent is not availing himself for effective interrogations during the said statutorily limited time schedule in spite of extension of the period permitted by FERA.

D It was submitted by both the senior counsel appearing for the respondent that respondent would not ask for return of the seized documents on the expiry of the said time schedule. But such a concession from the respondent may not help the Directorate because of the statutory limitation contained in
E Section 41 of FERA. Since the period fixed for return of the seized documents would have expired for no lapse on the part of the officials of the Directorate, we are of the considered opinion that public interest should not suffer by non utilization of the seized documents for interrogating the respondent. We therefore extend the said period for a further period of six months commencing from 4-1-1998. We make it clear that the Directorates shall abide by this
F extended time and no further extension shall be made by them except with the leave of this Court.

Subject to the aforesaid observations we allow the appeal filed by the Directorate and dismiss the appeal filed by the respondent. We set aside the order of the learned single judge of the High Court and restore the order passed by the learned Sessions Judge.

V.S.S.

Appeal allowed.