

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.680 of 2015

Alichery Nisabuddin

...Applicant

Versus

The Union of India & Anr.

...Respondents

Mrs. Aisha M. Zubair Ansari for the Applicant.

Ms G.P. Mulekar, APP for Respondent No.2-State

Mr. R.K. Pathak for Respondent No.1

CORAM:-M.L. TAHALIYANI, J.

DATED :21st JULY, 2015.

P.C.

Admit. Heard finally.

2. Heard learned Advocate for the Applicant, learned Sp.PP for Respondent No.1 and learned APP for Respondent No.2-State.

3. The Applicant is aggrieved by the order passed by the Sessions Court in revision application No.1538 of 2014. The revision application was filed by Union of India against the order passed by the learned Additional Chief Metropolitan Magistrate permitting the Applicant to travel to Dubai for a period of three months on security deposit of Rs.1,00,000/- and on some other conditions mentioned in

the order of learned Magistrate dated 11-11-2014. Sessions Court allowed the revision application and set aside the order of Magistrate. It is how the Applicant has not been able to travel abroad.

4. It is submitted on behalf of the Applicant that he is having business at Dubai and that his family members are also residing at Dubai. He is Indian national doing business at Dubai. It is submitted that he is having his own house in the State of Kerala.

5. In this regard it may be mentioned here that the accused was apprehended on 30-8-2014 at Chhatrapati Shivaji International Airport, Mumbai and gold worth more than Rs.3 crores was seized from the co-accused. It is the case of Respondent No.1-customs department that the gold was handed over to the co-accused by the Applicant within the premises of the Airport. As such the Applicant was not found in actual physical possession of the gold. The case of the Applicant appears to be based on the statement of the co-accused recorded under section 108 of the Customs Act.

6. Considering the fact that the Customs Department has not been able to file complaint even after lapse of one year from the date

of incident and also considering the material against the Applicant, I am inclined to set aside the order of the Sessions Judge and restore the order of the learned Additional Chief Metropolitan Magistrate.

7. Order passed by learned Additional Sessions Judge is set aside. Order passed by learned Additional Chief Metropolitan Magistrate is restored with modification in clause 'B' of the order. The security deposit shall be of Rs.4,00,000/- (Rupees Four Lakhs) instead of Rs.1,00,000/-. Rest of the order of the learned Additional chief Metropolitan Magistrate is maintained.

8. The criminal application stands disposed of.

(JUDGE)