

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPLICATION NO. 996 OF 2015**

1. James Jeesson John,  
2. Waqaas Abdul Hamid Shaikh,  
3. Mukesh Girdharilal Pahuja

...Applicants

Versus

1. Union of India  
2. The State of Maharashtra

...Respondents

Mr. A. M. Sachwani with Mr. V. M. Advani and Mr. R. R. Shah for the Applicants

Mr. R. K. Pathak, Spl. P.P. for the Respondent No.1 – UOI

Mr. S. S. Pednekar, A.P.P for the Respondent No.2 - State

**CORAM : REVATI MOHITE DERE, J.**  
**MONDAY, 28<sup>th</sup> SEPTEMBER, 2015**

**P.C. :**

1. Heard learned Counsel for the applicants and the learned Spl. P.P. for the respondent No.1. Both the Counsel were heard on 23<sup>rd</sup> September, 2015 and the matter was posted today for passing orders.

2. The applicant Nos. 1 to 3 were arrested on 4<sup>th</sup> May, 2015 for the alleged offences punishable under Section 135(1)(a), 135(1)(b) r/w 135 (1)(i) of the Customs Act.

3. The applicant No. 1 is an Air India employee; the applicant No. 2 was a passenger on the flight, who was carrying the gold at the relevant time and the applicant No. 3 is the alleged owner of the gold. All the three applicants were enlarged on bail by the learned Additional Chief Metropolitan Magistrate, 11<sup>th</sup> Court, Esplanade, Mumbai, vide order dated 11<sup>th</sup> May, 2015. The allegation as against the applicants is that they were trying to illegally smuggle gold weighing about 4.197 kg, worth Rs. 1,03,83,105/-. It is alleged by the prosecution that the applicant No. 3 bought the gold from Dubai and handed it over to applicant No. 2, who agreed to carry it to India for a monetary consideration. On arrival at the Mumbai Airport, the applicant No. 2 handed over the said gold to the applicant No. 1, an employee of Air India, and who was supposed to carry the said gold out of the Airport without declaring it with the Customs Authority. The applicants were enlarged on bail on 11<sup>th</sup> May, 2015 by separate orders passed by the Additional Chief Metropolitan Magistrate, 19<sup>th</sup> Court, Esplanade, Mumbai.

4. Subsequently, on 26<sup>th</sup> June, 2015, the respondent No. 1 filed an

application seeking cancellation of the applicants' bail essentially on the ground; that the applicants were involved in a serious offence of smuggling of gold valued at Rs. 1 Crore and odd; that one Sabu alias Sahebzada alias Salaluddin, another co-accused in the said case was absconding; and on the apprehension that the applicants would ensure that the said Sabu would not be arrested. It appears that the learned Additional Sessions Judge vide order dated 10<sup>th</sup> September, 2015 cancelled the bail of the applicants essentially on the ground that the applicants would help Sabu conceal himself from the Investigating Officer.

5. Learned Counsel for the applicants states that the application for cancellation of bail preferred on 26<sup>th</sup> June, 2015 was allowed by the learned Sessions Judge vide order dated 10<sup>th</sup> September, 2015, essentially on the ground that Sabu was yet to be arrested. Learned Counsel for the applicants submitted that the said finding is erroneous, inasmuch as, Sabu was arrested on 14<sup>th</sup> August, 2015 and was subsequently enlarged on bail on 21<sup>st</sup> August, 2015 by the learned Metropolitan Magistrate. He submits that the respondents have not filed any application for cancellation of Sabu's bail. Learned Counsel for the applicants further submits that after

the applicants were enlarged on bail, the respondents have been issued summons under Section 108 of the Customs Act, pursuant to which, the applicants have attended the office of the Commissioner of Customs and are ready to attend the concerned office as and when called for by the respondents. He submits that the ground on which cancellation of bail was sought, did not survive and therefore, the order cancelling the applicants' bail was clearly untenable in law.

6. Learned Spl. P.P does not dispute the fact that during the pendency of the application for cancellation of the applicants' bail, Sabu was arrested and that he was subsequently enlarged on bail. He submits that the applicants' custody is necessary for further investigation to find if any other persons are involved in the said case.

7. Perused the papers. The main ground on which cancellation of applicants' bail was sought, did not survive on the date on which the order i.e. 10<sup>th</sup> September, 2015 was passed, cancelling the applicants' bail. It appears from the order dated 10<sup>th</sup> September, 2015 that it was not pointed out to the learned Sessions Judge, that Sabu was arrested and was enlarged

on bail. It appears that the bail of the applicants was cancelled, essentially on this ground.

8. Considering the aforesaid, the order dated 10<sup>th</sup> September, 2015 passed by the learned Sessions Judge, Mumbai, cancelling the bail granted to the applicants, is quashed and set-aside. The order dated 11<sup>th</sup> August, 2015 passed by the learned Additional Chief Metropolitan Magistrate, 19<sup>th</sup> Court, Esplanade, Mumbai, granting bail to the applicant is maintained. However, the applicant shall attend the Office of the AIU on every alternate Friday between 11:00 a.m. to 2:00 p.m. till the issuance of show-cause notice.

9. Application is disposed of in the above terms.

10. All concerned to act on the authenticated copy of this order.

**REVATI MOHITE DERE, J.**

**CERTIFICATE**

Certified to be true and correct copy of the original signed Order.

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