

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on : November 20, 2015

+ BAIL APPLN. 1638/2015
MANJUNATH

..... Petitioner

Through: Mr.Amit Saxena, Advocate

versus

D R I, NOIDA, U P

..... Respondent

Through: Mr. P.C. Aggarwal, Advocate

**CORAM:
HON'BLE MR. JUSTICE P.S.TEJI**

JUDGMENT

P.S.TEJI, J.

1. The petitioner has filed the present bail application under Section 439 read with Section 482 of the Code of Criminal Procedure, 1973 for seeking bail in a Complaint Case No.02/1/2015 under Section 132, 135(1)(a), 135(1)(b) and 135(1)(c) of the Customs Act, 1962.

2. The allegations against the petitioner are that he was assisting the other co-accused in procuring red-sanders in trucks from South India, storing in their godown at Village Bakhtawarpur, New Delhi

and further illicitly exporting from Delhi Port to Dubai and it was found that the illicit export of red sanders was attempted in the guise of genuine exports of 'Acrylic Bath Tubs and Bath Tub Accessories' under Shipping Bill No.0018327 dated 16.10.2014 to Sharjah, UAE in Container No. TTNU-3869887/20' under forged documents in the name of M/s. Aqua Plus Global, Plot No.3, NSEZ, Noida. It is also alleged that the present petitioner was knowingly indulged in the illegal export of Red Sanders and he was the active member of the smuggling racket and is involved in procuring, packing, transportation, storage, concealing, illegal export and dealing with the recovered red sander wood which shows that the petitioner is a member of the racket of international smugglers.

3. The petitioner had also moved the bail application before the learned Additional Sessions Judge/Special Judge, CBI-02, New Delhi District, Patiala House Courts, New Delhi, which was dismissed vide order dated 06.06.2015, which is impugned in the present petition. The learned Additional Sessions Judge/Special Judge, CBI-02, New Delhi District, Patiala House Courts, New Delhi, keeping in view the fact that the offence involved the stealing and smuggling of a very

precious and scarce resource of the country and considering the fact that the operation involving the accused was very large, rejected the bail application of the petitioner.

4. Mr. Amit Saxena, Advocate appearing on behalf of the petitioner vehemently urged that the learned Special Judge has erred in rejecting the bail to the petitioner, as the other similarly placed co-accused – Babu @ Bobby has already been enlarged on bail vide order dated 14.5.2015 and submits that the petitioner is falsely implicated in the case as he was forced/coerced to sign some already written papers, contents of which were not explained to him. It is further urged that no offence is made out against the present petitioner under the Customs Act, 1962. Issue of territorial jurisdiction is also raised by counsel for the petitioner. It is further contended by counsel for the petitioner that merely a person found in possession of foreign currency, even with the intention of taking the same out of the country, if caught at a place other than the customs area, would not be liable to be punished under the Customs Act, though he may be liable for violating the provisions of the Foreign Exchange Management Act, 1999. It is further submitted that the petitioner is no more

required for the purpose of investigation; pre-charge evidence is yet to be completed therefore, trial of the case may take long time as there are 38 witnesses are to be examined, and petitioner, therefore ought to be granted bail in the aforesaid case, especially when the other co-accused persons have already been granted bail by the trial court. It is further submitted that the petitioner is a permanent resident of Delhi and has family to support therefore there is no likelihood of his absconding. The petitioner is the only son of his parents who are suffering with old age ailments and there is no other responsible person to look after them. According to the counsel for the petitioner, the offence alleged to have been committed by the petitioner cannot be termed as the offence of grave magnitude calling for severest punishment. In support of his contentions, the petitioner has placed reliance on *Anil Mahajan v. Commissioner of Customs & Anr.* 2000 (2) JCC 302 and *Gurcharan Singh & Others v. State*, AIR 1978 SC 179. At last, it is contended that the petitioner has clean antecedents and has roots in the society and there is no apprehension of his absconding or likelihood that he may tamper with evidence, especially when the witnesses in the present case are public officers and all the

incriminating material against the petitioner is in possession of the concerned department. Therefore, the petitioner ought to be granted bail in the present case.

5. Mr. P.C. Aggarwal, learned Special Public Prosecutor for the DRI vehemently opposed the aforesaid contentions raised by counsel for the petitioner.

6. I have heard the submissions made by learned counsel for the petitioner and the learned Special Public Prosecutor for DRI. I have also gone through the judgments relied upon by the petitioner.

7. After considering the contents of the present petition as well as the submissions made by counsel for the petitioner and by learned Additional Public Prosecutor for the State and on perusal of the material placed on record, this Court is of the opinion that the petitioner does not deserve for grant of concession of bail at this stage, as:

- a. The petitioner is involved in stealing and smuggling of 54.7 Metric Ton Red Sander Wood valued at Rs.23.3 crores, which is a very precious and scarce natural resource of the country.

- b. The writ petition (Crl.) No.1214/2015 filed by Smt. Bhawani Verma vs. UOI & Anr, in the matter of the detention order passed against Shri Deepak Verma (co-accused) under COFEPOSA has already been dismissed by the Hon'ble Delhi High Court vide its judgment dated 4.9.2015.
- c. The petitioner seems to be an active member of smuggling racket which deals in smuggling of Red Sender Wood which is prohibited and recovery of 54.70 MT valued at Rs.23.03 crores has been effected from the petitioner in the present case.
- d. The bail application filed by the co-accused Anil Kumar and Babu @ Bobby, raising similar contention that *'the present complaint is not maintainable on the point of jurisdiction and case under the Customs Act 1962 is not made out, therefore the applicants are entitled for bail'*, but after some arguments, the same had been withdrawn by the applicants. Accordingly, the same was dismissed as withdrawn vide order dated 19.3.2015.

e. The petitioner cannot seek parity with the co-accused Babu @ Bobby, as the bail was granted mainly on the medical condition of the accused as he was suffering from TB.

8. It goes without saying that any observation made in the aforesaid order shall not affect the merits of the case at trial.

9. In view of the aforesaid, this Court is of the considered opinion that the petitioner does not deserve the concession of bail in this case, at this stage. Accordingly, the present application filed by the petitioner – Manjunath is dismissed at this stage.

10. The bail application stands disposed of accordingly.

(P.S.TEJI)
JUDGE

NOVEMBER 20, 2015
pkb