

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 1262 OF 2016

Ajit Babu Satam

... Applicant.

V/s.

The State of Maharashtra

... Respondent.

Mr. Ganesh K. Gole, Advocate a/w. Ritesh Ratnam, Advocate for the Applicant.

Mr. Deepak Thakre, A.P.P. for the Respondent – State.

Mr. Renold Pinto (DGM-HR, Gateway Distri Parks Ltd.) is present.

CORAM : A. M. BADAR, J.

DATE : 04th AUGUST, 2016

P.C. :

1 This anticipatory bail application is a part heard matter. Yesterday arguments of the learned counsel for the applicant so also of the learned APP were heard extensively and as the court time was over and concluding arguments of the learned APP remained to be heard, this application is posted today for hearing remaining arguments of the learned APP as well as for orders.

2 When the matter is called out today, a person who told his name as Renold Pinto and designation as D.G.M.-H.R. of the Gateway Distri Park Ltd. appeared and made a statement that he wants to intervene in the matter. Said person, who is

present before the court, is not the informant. He has not filed any affidavit nor engaged any lawyer. As arguments of parties were virtually over, the request of the person who seems to stranger to the matter is rejected.

3 The applicant is an accused in Crime No. I-27 of 2016 which is registered with Uran Police Station, Raigad at the instance of informant-Jacob Thomas, Senior Vice President of Gateway Distri Park Ltd., for the offences punishable under sections 379, 465, 468, 420, 471, 120-B of the Indian Penal Code and under sections 26, 41, 42 and 69 of the Indian Forest Act, by this application under section 438 of the Criminal Procedure Code, is praying for pre-arrest bail.

4 Heard the learned counsel appearing for the Applicant/accused. He argued that after filing of the chargesheet in the crime in question, custodial interrogation of the present applicant is not at all warranted. Learned counsel for the applicant by taking me through the entire chargesheet, argued that there is no iota of evidence against the present applicant. Learned counsel further argued that co-accused-Deepak Patil and Santosh Patil in their memorandum of statements referred the name of the applicant. Learned counsel argued that confessional statements of co-accused-Deepak Patil and Santosh Patil are not admissible in evidence. More over, according to the learned counsel for the applicant,

averments in the confessional statement of co-accused are totally unnatural and unbelievable. Said co-accused stated that in all 15 Tons Red Sandalwood was entrusted to co-accused-Sujit Satam and he had returned 3 tons of Red Sandalwood to other co-accused persons. Learned counsel argued that it is unnatural and unbelievable that accused-Sujit Satam will return 3 tons Red Scandalwood to other co-accused. According to him, this is a trick played by the police to implicate the relatives of the co-accused-Sujit Satam.

5 Learned APP vehemently opposed the application and argued that the investigation is still going on and in the statement of co-accused, name of the present applicant is figured as of person to whom 3 tons of Red Sandalwood was entrusted for selling it. Learned APP submits that the present applicant has criminal antecedents and he was also previously involved in smuggling of Red Sandalwood as well as other articles.

6 At the outset let us put on record that to protect and improve the natural environment including forests, lakes, rivers and wild life is the important fundamental duty, adherence to which is obligatory on each and every citizen of India. True it is that provisions of Article 51A of the Constitution cannot be enforced by writs but none the less every citizen is bound to follow them faithfully.

7 Perused the chargesheet. In the case in hand, in all 21 accused persons were arrested and as per the chargesheet, accused named-Sujit Satam, present applicant-Ajit Satam, Pakya and Ganesh Mhaske are still absconding. According to the prosecution case, accused persons have stolen a container of Red Sandalwood and illegally exported that Red Sandalwood, weighing 15 tons and 390 kilograms, which was in-fact detained earlier by the Customs Department and entrusted for its safe custody to the Gateway Distri Park Ltd..

8 Red Sandalwood or Red Sanders (botanical name “Pterocarpus Santalinus”) is the timber which is smuggled most from the country, as it fetches astonishing price of about Rs.70 lacs per ton in international market. The Central Government has taken steps to curb the racket of illicit export of Red Sandalwood and has even taken steps to get State wise inventories of such trees. Red Sandalwood is listed in Appendix-II of the Convention on International Trade in Endangered Species of Wild Flora and Fauna, commonly known as “CITES Treaty”. India is signatory to this Treaty. Export of Red Sanders is prohibited under Chapter 44 Serial No.154 of the Export Policy. It hardly needs to emphasis that ecological balance of the planet earth is dependent on preservation of flora and fauna. It is the fundamental duty of a citizen. This aspect will have to be kept in mind while deciding the instant application.

9 Record of investigation shows that the Custom Intelligence Officer found that the container having goods declared as “Self Adhesive Paper Fasson TT2C Permanent” was in fact stuffed with Red Coloured Wooden Logs. Shipping bill of this container was in the name of Exporter-Avery Dennison (I) Pvt. Ltd.. Name of the consignee was M/s. Green Life General Trading LLC, Dubai, UAE. As prima facie it was found that the container was containing prohibited goods i.e. Red Sanders, necessary panchanama was prepared by the Customs Intelligence Officer. Ultimately, the timber was found to be the red sandalwood/red sanders.

10 Record of the investigation shows that the said container was entrusted by the Customs Department to the Gateway Distri Park, a Company which was taking care of operation and management of the Punjab Containers and Warehousing Co. Pvt. Ltd.. (Punjab Conware).

11 On 26.01.2016 Jacob Thomas, Senior Vice President of the said company lodged the FIR which has resulted in registration of the crime in question. The informant averred that on 09.01.2014, the Customs Department had entrusted the container, containing 15 tons and 39 kilograms of Red Sandalwood to it after sealing for keeping that container in safe custody. The FIR further reveals that on 23.01.2016, the Customs Investigating Agency checked that container. It

was found that the said container by that time was replaced by another container with different number. It was found to be having a private seal instead of the seal of the Customs Department. The substituted container was found to be containing stones weighing about 7 tons. The preliminary inquiry by the Gateway Distri Park found that it was on 7.12.2015, the container entrusted to it by the Customs Department containing Red Sander was removed and stolen by substituting it by another container. It was thus found that Red Sandalwood of estimated market value as estimated by the informant at Rs. 1,07,73,000/- is thus stolen alongwith the container.

12 On filing of the said FIR, wheels of investigations were set in action. During investigation, the Investigators found that accused persons had substituted the container, containing Red Sandalwood with another container loaded with Stones by using Kalmar Machine. During investigation, confessional statements of accused persons such as : Vishal Sale, Chetan Kadu, Manoj Bhoir and Vishal Patil, Deepak Patil, Balya @ Vishwajit Gharat, Sumit Wani, Pretesh Mukadam, and Santosh Patil have been recorded. Pursuant to their confessional statements, recoveries were effected. It is seen from confessional statements of accused-Vishal Sale, Chetan Kadu and Manoj Bhoir that the container containing Red Sandalwood was stolen and for that purpose, accused no. 12-

Sagar Mhatre had paid an amount of Rs. 5 lakhs each to accused- Vishal Sale and Chetan Kadu. Rs. 2 lakhs were paid by accused no. 12-Sagar Mhatre to accused-Manoj Bhoir for this purpose. During investigation it was found that accused no. 5-Nagnath Albu had driven the truck for transporting the stolen material. Confessional statement of accused no.7-Santosh Ram Patil shows that Red Sandalwood was entrusted to accused no. 6-Sumit Wani and accused Santosh Patil received Rs.56 lakhs in this transaction. Confessional statement of accused no.8-Deepak Patil shows that accused no.6-Sumit Wani had sold the Red Sandalwood. Confessional statement of accused no.6-Sumit Wani shows that with the help of absconding accused no.2-Sujit Satam, 12 tons of Red Sandalwood was illegally exported to Dubai. Accused no.6-Sumit Wani received an amount Rs.3.50 crores from wanted accused-Sujit Satam in this transaction and articles worth Rs. 25.21 lakhs came to be recovered from him. Statement of accused no.6-Sumit Wani further shows that remaining 3 tons of Red Sandalwood was then entrusted to accused no. 8-Deepak Patil. Confessional statement of accused no.7-Santosh Patil shows that absconding accused -Sujit Satam had sold 12 tons of Red Sandalwood and returned 3 tons of Red Sandalwood which was then entrusted to present applicant-Ajit Satam. Confessional statement of accused no.8- Deepak Patil also reveals the same fact.

13 For the purpose of investigation for getting the clue and to detect the mode and manner of commission of offence, the statement of co-accused can be used by the investigator. They may not legally admissible in evidence before the court but for tracing out absconding accused and detecting the offence, such statements can be relied upon by the Investigator for the purpose of conducting investigation. As such it cannot be said that as confessional statements which have resulted in effecting recoveries and discoveries are inadmissible in evidence before the court, the investigator cannot make use of the same. This is a case of an illicit felling of the Red Sandalwood in huge quantity and attempt to export the same illegally. After detecting the same, the Customs Department was intending to take necessary action. It appears that such action by the Customs Department is thwarted by the theft of the Red Sandalwood.

14 In this case, the Investigator will have to go to the root of the matter by tracing out forests from which the Red Sandalwood has been felled illicitly. The Investigator will have to investigate how the Red Sandalwood, which is a prohibited good is illegally exported. For that purpose, role of the employees of the Customs Department so also that of employees of the Port Trust in this racket will have to be ascertained. This is particularly so because the prosecution is alleging that 12 Tons of the Red Sandalwood is already

exported illegally. That material so also the remaining 3 Tons of Red Sandalwood allegedly entrusted to the present applicant will have to be recovered. For this purpose, further investigation as well as custodial interrogation of the present applicant is must. The chargesheet shows that the stolen precious timber is not yet recovered. It hardly needs to point out that custodial interrogation is qualitatively more elicitation oriental than interrogating a subject who is well insulated with an order of pre-arrest bail. In this case custodial interrogation will result in yielding more useful information about the person or government employees who may be involved in illicit export of prohibited Red Sandalwood. Property involved in the crime can also be recovered by custodial interrogation of the applicant.

15 Learned APP during the course of hearing has placed on record a communication dated 27th July, 2016 issued by the Ministry of Finance, Department of Revenue, Directorate of Revenue Intelligence, Mumbai Zonal Unit, Mumbai, addressed to the Senior Police Inspector of Uran Police Station, Navi Mumbai. This communication reveals that the present applicant is a member of the gang involved in crimes of smuggling of Red Sanders by replacing the container containing Red Sandalwood with other containers. The Directorate of Revenue Intelligence had informed the Investigating Officer that a show cause notice dated

29.02.2012 was issued to the present applicant and his associates for confiscation of 201 MTs Red Sanders and for imposition of penalties as per provisions of the Customs Act 1962. It is reported that the present applicant was detained under the COFEPOSA Act, 1974. It is also reported that the complaint bearing no.142/SW/2015 is also filed by the Directorate Revenue Intelligence against the present applicant and the same is pending before the court of Chief Metropolitan Magistrate, Mumbai. This communication also shows that penalty of Rs. 110 crore was imposed on the present applicant for his activities of smuggling Red Sandalwood. Investigation against the present applicant was carried out by the Directorate of Enforcement under the provisions of PMLA, 2002 and the said Special Case No.2 of 2014 under the said Act is pending against him in the court of the Special Judge, PMLA, City Civil & Sessions Court for Greater Mumbai. The Directorate of Revenue Intelligence further reported that the present applicant and co-accused-Sujit Satam are earlier found to be involved in various cases of smuggling detected since the year 2000 and several complaints such as (i) 1706/CW/02, (ii) 08/CW/06, (iii) 1706/SW/06, (iv) 66/SW/08 and (v) 17/SW/09 are pending against him.

16 The complicity of the present applicant in the crime in question which is of illicit export of Red Timber Sandalwood is prima facie established. The container containing Red

Sandalwood which was being illegally exported was detained by the Customs Department. It was again stolen and major part of Red Sandalwood is seen to be again exported illegally by accused persons, including the present applicant. Prima facie, it appears that apart from wanted accused, employees of the Government Department in charge of exporting the goods may also be involved in this international racket of illicit export of Red Sandalwood. Similarly without connivance of the employees of the Forest Department illicit felling of such precious timber is not possible.

17 The criminal antecedents of the present applicant are also of over bearing importance. Thus it appears to be international racket of illicit export of Red Sandalwood in contravention of the CITES Treaty is operating at JNPT Port Trust and for bursting it effectively custodial interrogation of the present applicant is must.

18 No case of anticipatory bail is made out. The application is therefore, rejected.

19 The Registry is directed to send a copy of this order to the S.P. Raigad at Alibag for necessary action.

(A. M. BADAR, J.)