IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

ANTICIPATORY BAIL APPLICATION NO.1907 OF 2015

Naseer Shafeeq Shaikh ... **Applicant**
V/s.
The State of Maharashtra & Ors. ... **Respondents**

WITH

ANTICIPATORY BAIL APPLICATION NO.1600 OF 2015

Chandrakant Purshottam Parab ... **Applicant**
V/s.
The State of Maharashtra ... **Respondent**

.....

Mr. Yusuf Khan Advocate for the applicant in ABA No.1907/15.

Mr.A.P. Mundargi, Sr. Advocate i/b Mr.Ashish Bhalchandra Baraskar, Advocate for the Applicant in ABA No.1600/15.

Ms.S.S.Kaushik, APP for the Respondent/State.

API Raju Vasant Mahanor from Crime Branch, Railway, Mumbai present

....

CORAM : P. N. DESHMUKH J.

DATED : 25th JULY 2016.

P.C.

1 Both these applications are arising out of crime No.I-513/2015 registered by Kurla Railway Police Station, Mumbai on 10th September 2015 for the offence punishable under sections 409, 420,

465, 468, 471 read with section 34 of the IPC and section 145B (163) of Indian Railways Act and thus, can conveniently be disposed off by this common order.

2 Applicant Chandrakant Parab is an Octroi Inspector working in BMC for last 22 years and on said post since 6 years prior to incident, and is attached to Kurla Railways Terminal, Mumbai, while applicant Naseer Shaikh, is in business of unloading the goods whatsoever received through Railways and is carrying such business by entering into an agreement with the department, since many years prior to the incident.

3 According to the FIR lodged by one Ajay Bose – Head Clerk in Parcel Section that on 8th September 2015 at about 00.00 hours, Lucknow Express arrived at Kurla Station, wherefrom 53 cartons were unloaded by Parcel Clerk - Mr.Mourya of which applicant Naseer was asked to produce clearance papers as the goods appeared to be chargeable for Octroi as they were in the form of cartons. Thereafter, at 3.45 am, some person on behalf of applicant – Naseer produced the receipt having stamp thereon as "Not liable to Octroi" and tried to clear the goods due to which suspicion arose in the mind of officials present there and learnt that applicant – Naseer Shaikh had given declaration that the goods consists "rice" instead of "leather articles and clothes" deliberately to avoid Octroi. Hence, it appears to be the case of the prosecution that both the applicants, inspite having knowledge of Octroi being leviable on goods. On joining hands with each other cheated Government for non-payment of revenue to Railways as well as

BMC authorities on making them to rely upon fake and fabricated receipt.

4 It is the case of applicant Chandrakant that he is falsely implicated and has no role to play in the present crime and learned counsel for the applicant by referring to the relevant provisions of Octroi Rules of 1965 had put forth that as Octroi Inspector, said applicant is required to examine the documents and to determine whether the goods mentioned therein are leviable for Octroi charges or not, and has contended that as applicant has followed the procedure as per Rules, he has not committed any offence. It is also submitted that the entire liability is with the agent making declaration and he is solely responsible for wrong declaration if any made.

5 It is also submitted that applicant is not on the platform when the goods arrived by train, but is provided with the office space within the Railway premises at a distance of about about 1 km where from the goods are unloaded. It is thus pointed out that as such, and even otherwise, applicant does not come into or is required to do physical verification of goods received by agent, unlike in case of goods transported by road, where the Octroi Inspector are required and are duty bound to personally and physically verify the vehicles if they are loaded with any articles upon which Octroi is leviable.

5 It is the case of applicant Naseer Shaikh that his father is in this business of unloading goods received through Railways Carrier under agreement entered with Railway Authorities since more than 20

years, and till today, there is no such incident as alleged in the present FIR. It is his case that normally parcels unloaded by him contain Rice, and occasionally, leather goods or other articles are received, however, in this case, since had received parcel containing Rice only, had made entries in the receipt to that effect, and as such, is an innocent person, having no way involved in fabricating any false documents to evade Octroi charges as claimed. Both the learned counsel thus prayed that the applications be allowed.

6 Prosecution has opposed both these applications, contending that applicant Chandrakant is duty bound to inspect the goods and documents and in fact, is also an authority to ask the agent to open the parcels if he suspects contents thereof, and it is only after his satisfaction he should endorse if the goods are liable for Octroi or not. However, in the instant case, applicant without physically verifying the goods, had simply relied upon the description of articles on the receipt produced by co-accused Naseer, and put his stamp that Octroi is not leviable on the goods.

7 Application of applicant Naseer is opposed on similar grounds of his being instrumental in fabricating manifest receipt to waive Octroi charges inspite of his having knowledge that he has imported goods upon which Octroi is chargeable and not rice, and as such, has caused loss of revenue to Railways and BMC Department.

8 Learned APP during the course of submission, has referred to manifest receipt and submitted that involvement of both the

applicants is clearly established as above in said Crime, and has thus prayed for rejection of his applications as Custodial Interrogation of applicants is necessary.

9 With regards to submissions advanced, as aforesaid, about role of applicant Chandrakant is concerned, on perusal of Octroi Rules 1965, it appears that separate provisions are carved out for import of goods by Railway, by Airway, by sea and by roadways.

In the background of facts involved in these relevant procedures required to be followed on importing goods by Railways is to be considered.

Section 6 of said Rules provides for Procedure to be followed by the Octroi Inspector as well as Importer. Relevant procedure is reproduced hereinafter :-

> “The importer shall fill in an application to pay Octroi on Form 'A' and Octroi Import Bill on Form 'B' annexed to these rules and shall present the said forms along with the original invoice to the Municipal Octroi Inspector wherever posted by the Commissioner or any other officer appointed by the Railway Authorities concerned for this purpose, together with the Railway Receipts or the Parcel Way Bill in respect of the articles imported by him.”

> The said Inspector or Officer shall check these forms with the Railway Receipt or Parcel Way Bill as the case may be and determine whether the articles imported are liable to Octroi, and if so shall indicate thereon the Item No."

12 On bare perusal of above procedure, *prima facie* it appears that Octroi Inspector who is posted at relevant place at relevant time for the purpose of ascertaining if the goods received are leviable for Octroi, is to verify Railway Receipt or the parcels in respect of articles imported by Importer and produced by him. The Inspector or the Officer shall check these documents, forms with the railway receipts, parcels, as the case may be, and determine whether the articles imported are liable for Octroi. Referring to these procedures, learned APP, had contended that for the purpose of determining if the goods received are liable for payment of Octroi, it is necessary for the concerned Octroi Inspector to physically check the goods. However, in the absence of any specific clause in the procedure, as aforesaid, it cannot be held that Octroi Inspector is required to physically verify or check the contents of parcels as against the goods received by roads as has been pointed out by learned counsel for the applicants, wherein Rule 10 with regard to Import of goods by road, it is very specifically mentioned that every driver of the vehicle shall stop his vehicle at the Octroi Post so as to enable the Octroi staff to ascertain whether said vehicle contains any article liable to Octroi.

13 Above provision thus clearly establish that the Octroi Inspector who is posted at the Octroi Post wherefrom vehicles enter within the limits of Bombay City has to physically ascertain if the vehicle are containing any goods upon which Octroi is leviable.

14 Prosecution during the course of hearing relied upon two manifest Receipts out of which one has been seized as produced by applicant Naseer at Kurla Railway Office and one receipt is stated to be fabricated having stamp put thereon as “Good not liable to Octroi”, and having considering the submissions advanced, as aforesaid, together with the case of applicants that applicant who is an Octroi Inspector has to verify documents for the purpose of ascertaining if the goods are liable for charging Octroi who admittedly, is not present at the spot when the goods are unloaded, but is in his office situated at a distance of 1 km from the platform, while according to the case of applicant Naseer since he is stated to be working under agreement entered with Railways by his father since last 20 years having no such incident reported any time before having no criminal antecedents, though investigation is in progress, both the applications are liable to be allowed, as per order below, as further investigation, if any, can be carried out even without their custodial interrogation since based on documentary evidence. In that view of the matter, following order is passed.

<u>O R D E R</u>

Order passed in Anticipatory Bail Application Nos.1600/2015 and 1907/2015 dated 23.10.2015 and 29.12.2015 respectively stands confirmed with further direction to applicants to attend Investigating Officer on 27th July 2016 to 1st August 2016, and thereafter on 6th August 2016 and 7th August 2016 between 11.00 am to 2.00 pm, and thereafter as and when called by Investigating Officer till filing of charge-sheet.

Needless to say that Investigating Officer shall issue notice sufficiently in advance to the applicants, if they are further called by the Investigating Officer.

(P. N. DESHMUKH J.)