

nsc.

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

***CRIMINAL APPLICATION NO.15 OF 2013  
IN  
CRIMINAL BAIL APPLICATION NO.1501 OF 2011***

1. Sushil Subhashchandraji Badjate
2. Shailesh Subhashchandraji Badjate ...Applicants

Versus

Union of India and Ors. ...Respondents

Mr.Chetan Agarwal, for the Applicants.

Mr.S. S. Pednekar, A.P.P for the Respondent-State

Mr.S.D.Patil, Special Public Prosecutor a/w Mr.S.V.Walve, for the Respondent No.2.

***CORAM : REVATI MOHITE DERE, J.***

***DATE : 27<sup>th</sup> JUNE, 2017***

**P.C. :**

1. Heard learned counsel for the parties.

2. By this application, the applicants seek relaxation of the condition imposed by this Court (Coram: R.C.Chavan,J.) vide order dated 27<sup>th</sup> September, 2011, passed in Bail Application No.1501 of 2011.

3. Learned Counsel for the applicants seeks relaxation of the condition, by which, the applicants and all the persons having interest in the property land bearing Gat No.199/3, Near APMC New Mondha & Mahico Research Centre, Jalna and the area 3.43 Hectare = 8.47 Acre & 34289.27 sq.mt, were directed to file an undertaking stating that they would not transfer the said property or create any encumbrance thereon, till the adjudication in respect of the liability of the applicants and M/s.Rutuja Ispat Private Limited is over and liability towards excise duty and penalty etc. of the applicants and the Company is entirely liquidated. Learned Counsel submitted that the applicants be relieved of the said undertaking. He has also stated in his application, that till date no adjudication has taken place nor even any show-cause-notice has been issued by the respondents.

4. Learned Special Public Prosecutor opposed the application. He submitted that final adjudication has taken place on 12<sup>th</sup> August, 2016. He relied on the said order dated 12<sup>th</sup> August, 2016 issued by the Office of the Commissioner of Central Excise, Customs & Service Tax. He submitted that pursuant to the said adjudication, an amount of Rs.45 crores odd has been imposed on the applicants. He submitted that the said order has not been challenged by the applicants. Learned Counsel for the applicants states that the applicants are in the process of challenging the said order.

5. Learned Special Public Prosecutor further submits that bail was granted by this Court vide order dated 27<sup>th</sup> September, 2011, pursuant to the statement made in the application by the applicants and the Counsel for the applicants, that they were ready to give an undertaking on oath, that they would not create any interest in or encumbrances on the property, pending adjudication of the applicants' liability towards the duty, which they are alleged to have evaded, and in the event, the applicants fail to pay the duty, they would provide the property mentioned in the application as security for recovery of the duty evaded. He submitted that now that there is a final

adjudication, no interference is warranted.

6. Perused the papers. This Court (Coram:R.C.Chavan,J.) vide order dated 27<sup>th</sup> September, 2011, passed in Bail Application No.1501 of 2011 granted bail to the applicants therein, on the condition that the applicants and all the persons having interest in the property land, bearing Gat No.199/3, Near APMC New Mondha & Mahico Research Centre, Jalna and the area 3.43 Hectare = 8.47 Acre & 34289.27 sq.mt. would file an undertaking on oath, that they would not transfer the said property or create any encumbrance thereon till the adjudication in respect of the liability of the applicants and M/s.Rutuja Ispat Private Limited is over and liability towards excise duty and penalty etc. of the applicants and the Company is entirely liquidated. They were also directed to state, that should the duty which may be eventually found due, as per the appropriate proceeding be not paid or the dues not liquidated, they would offer this property as security for liquidation of their dues along with 7/12 extract and copy of the title deed. The undertaking filed by the applicants has been annexed to the application and the same is on page 20 of the application. In the said undertaking, it was undertaken by the applicants

that they will not create any third party rights/interests or to deal with the aforesaid plot of land, till the final conclusion of the trial. They had further undertaken that if upon finality of the trial and the liability to pay the duty has been proved against them after following due process of law, the said plot of land can be subjected to recover the proved liability, on their failure to satisfy the same. It appears that the bail was granted to the applicants, essentially in view of the averment made in the application and the undertaking given by the applicants. It also appears that after this application was filed in 2013, final adjudication has taken place and the Commissioner of Central Excise, Customs & Service Tax has adjudicated the claim and has come to the conclusion, that the applicants are liable to pay an amount of Rs.45 crores odd. It appears that as of today the said proceedings are not challenged by the applicants.

7. The applicants are bound by the said undertaking. No ground is made out to relax/modify the undertaking. Considering the aforesaid, there is no merit in the application.

8. The Application is accordingly rejected and disposed of as such.
9. All concerned to act on the authenticated copy of this order.

***(REVATI MOHITE DERE, J.)***