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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 216 OF 2017

Haruhide Sagawa

..Applicant.

Vs.

Intelligence Officer & Anr.

..Respondents

Mr. Subhash Jha a/w Ms. Sanjana Prajapati i/b Law Global Advocates for applicant.

Mrs. Aruna K. Pai for Respondent No.1.

Mr. M.G. Patil, APP for State.

CORAM: A.S. GADKARI, J.

DATE : 11th April 2017.

P.C.

1] This is an application under Section 439 of Cr. P.C. for bail in Criminal Case No.70/CW of 2016 arising out of R.A. No.136/2016 registered by the Directorate of Revenue, Mumbai Zonal Unit, Mumbai.

2] It is the allegation against the applicant that on 31.3.2016 the applicant was found in possession of five kilograms of gold. That the applicant made an attempt to smuggle the gold in India by concealing it on his person. The Investigating Agency was suspicious about the movements

of the applicant and after verification of information about the arrival of the applicant at Chhatrapati Shivaji International Airport, Mumbai, the Investigating Agency laid a trap and apprehended the applicant. After completion of investigation, the Investigating Agency has filed the aforesaid complaint before the Metropolitan Magistrate, Esplanade, Mumbai.

3] The record reveals that successive applications preferred by the applicant under Section 437 of Cr. P.C. have been rejected by the Trial Court, mainly on the ground that the applicant is a foreign national and that he tried to smuggle huge quantity of gold in India. The Bail Application No.2334 of 2016 preferred by the applicant has been turned down by the learned Additional Sessions Judge, Greater Mumbai by its Order dated 19.1.2017 on the ground that the applicant is a foreign national; that the trial has already began; that if the applicant is released on bail, he may jump the bail and there is no possibility that he may come back to India to face the trial. In the premise the present application under Section 439 of Cr. P.C. is filed on 23.1.2017.

4] The learned Counsel appearing for the applicant submitted that, merely because the applicant is a foreign national, he cannot be denied to be released on bail. In support of his contention, he relied on the

decision of the learned Single Judge of this Court in Bail Application No.3287 of 2006 dated 18th September 2006 [Samson Osobai Vs. The State of Maharashtra & Anr.]. He further submitted that merely because the trial has commenced, that does not disentitle the applicant to be admitted on bail. In support of his contention, he relied on the decisions of the Apex Court in the case of (1) *Sanjay Chandra* [(2012) 1 SCC 40] and (2) *Maulana Mohammed Amir Rashadi* [(2012) 2 SCC 382]. The learned counsel for the applicant submitted that the passport of the applicant has already been taken into custody by the Investigating Agency and if the applicant is released on bail, there is no possibility of he fleeing away from the ends of justice. He therefore prayed that the applicant may be released on bail.

Per contra, the learned APP on instructions submitted that the trial pertaining to the present case has already began and charge has been framed on 1.3.2017 and the prosecution has examined four witnesses. She on instructions submitted that as of today the applicant has already cross-examined PW No.3 and recording of evidence of PW No.3 is completed. She further submitted that the trial pertaining to the present case will come to an end in near future and if the applicant is released on bail, there is every probability that he may abscond and may not be available for trial.

5] I have perused the record annexed to the application and the citations relied upon by the learned counsel for the applicant. There cannot be any dispute over the proposition of law that even a foreign national is having right to live as contemplated under Article 21 of the Constitution of India. As far as the decision relied upon by the learned counsel for the applicant in the case of Sanjay Chandra (supra), the Apex Court in para-43 has observed as under:

“43] There are seventeen accused persons. Statement of the witnesses runs to several hundred pages and the documents on which reliance is placed by the prosecution, is voluminous. The trial may take considerable time and it looks to us that the appellants, who are in jail, have to remain in jail longer than the period of detention, had they been convicted. It is not in the interest of justice that accused should be in jail for an indefinite period. No doubt, the offence alleged against the appellants is a serious one in terms of alleged huge loss to the State exchequer, that, by itself, should not deter us from enlarging the appellants on bail when there is no serious contention of the respondent that the accused, if released on bail, would interfere with the trial or tamper with evidence. We do not see any good reason to detain the accused in custody, that too, after the completion of the investigation and filing of the charge-sheet.”

In view of the aforesaid observations, the Supreme Court was pleased to release the applicant therein on bail.

6] As far as the present applicant is concerned, apart from the fact that the applicant is a foreign national and was apprehended while attempting to smuggle five kilograms of gold in India, as stated earlier the trial pertaining to the present case has already begun and the prosecution has already examined four witnesses and the applicant has also completed cross-examination of PW-3 and there is every probability that the applicant may flee from the ends of justice and will not be available for further trial if released on bail.

In view thereof, the applicant does not deserve to be released on bail.

7] The Application is accordingly rejected.

8] It is needless to mention that the Trial Court may not get influenced by the observations made hereinabove while conducting the trial of the applicant.

(A.S. GADKARI,J.)