Nalawade

THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.389 OF 2017

Rajkumar Bhagwandas Gupta. ..Applicant.
Vs/
The State of Maharashtra and ors. ..Respondent.

Mr. Shirish Gupta with Mr. Rajiv Chavan, Mr. Manoj Mohite and Mr. H. Giri i/by Prashant Patil for the Applicant.
Mr. R.K. Pathak for Respondent No.2.
Mr.Ranvir Singh, I.O., DRT present in Court.
Mrs. P.P.Shinde, APP for the Respondent-State.

CORAM :A.S.GADKARI, J.
DATE : 20th April, 2017

P.C.

1) This is an application under Section 438 of the Cr.P.C. for pre- arrest bail in a case registered by Directorate of Revenue Intelligence, Zonal Unit, Mumbai the respondent No.2 in File No. DRI/MZU/B/INT-100-16 for the offence punishable under Section 135(i) of the Customs Act, 1962.

2) It is the case of the prosecution that on 19.10.2016 the respondent No.2 Investigating Agency received specific confidential intelligence report that a person by name Anant Shankar Dubey was to carry smuggled gold. That, the said person was intercepted by the officers of the respondent No.2 who was found in possession of smuggled gold bars kept inside his bag. The said smuggled gold bars

were weighing 25kgs. amounting to Rs.7.98 crores.

That, on further inquiry with the said Anant Dubey he informed that more smuggled gold is lying in the premises of Nirvi Impex situated at Dhanaji Street, Kalbadevi. The Officers of respondent agency searched the said premises and recovered additional gold. That, some of the gold bars which were recovered were having foreign marks. It was further revealed that the smugged gold was transferred and/or kept at the premises of the factory of a company by name R.V. Gold situated at Fofalwadi, Kalbadevi, Mumbai. The officers of the respondent agency thereafter searched the premises of R.V. Gold and further recovered 9.5k.gs. of gold from the said premises. That, a statement of the employee of R.V.Gold namely Mr.Govind Gupta was recorded under Section 108 of the Customs Act. That, the said Govind Gupta admitted that he is working at the gold mining factory of R.V.Gold and the said company namely R.V.Gold is owned by the applicant and his wife Smt. Vandana Gupta. The applicant is also owner of Raj Bullion. In pursuance of the information given by the said Govind Gupta premises of Raj Bullion was searched on 5.11.2016 and an amount of Rs.93,80,000/-in cash was seized from the said premises. In the premise, the respondent No.2 has lodged offence as file No.DRI/MZU/B/INT-100-16 punishable under Section 135(1) of the Customs Act.

2) Heard the learned counsel for the applicant and the Special PP for respondent No.2. Perused the record of investigation and the affidavit of Shri.Rahul Singh the Investigation Officer dated 2.3.2017.

3) The learned counsel for the applicant submitted that during the intervening period from filing of the present application till today there are subsequent developments such as investigating agency after filing of the present application has completed investigation and have issued the notice of adjudication. The said notice is accompanied with the statements of the witnesses relied upon by the prosecution in support of its case. He submitted that some of the witnesses have retracted their confessional statements recorded under Section 108 of the Customs Act. He further submitted that company namely R.V. Gold is a proprietary concern of Shri. Kishore Trivedi and the applicant has nothing to do with the said concern. He placed reliance on the documents received by his client under Right to Information Act wherein shop establishment licence and other documents are issued in the name of R.V.Gold is owned by Mr. Kishore Trivedi. He submitted that as per his instructions said Trivedi is also holding one account with the bank. He further submitted that there are inter se business relations between Nirvi Impex and the applicant firm and the applicant used to place orders for melting gold with the Nirvi Impex as the applicant is the holder of the trader mark. That the gold bars or biscuits

found with the mark of RVBL has no connection with the present crime as for preparing and/or manufacturing the said gold articles, the applicant company has been paying the necessary charges to the said Nirvi Impex. He lastly submitted that in view of the issuance of notice for adjudication by the revenue department it clearly denotes that the investigation of the present crime is completed and that the custodial interrogation of the applicant is not necessary. The learned counsel or the applicant submitted that he did not attend the office of the Investigation Officer in pursuance of the summons as the applicant apprehends third degree treatment or the torture at the hands of the officers of respondent No.2.He therefore, prayed that applicant may be granted pre arrest bail.

4) Mr. Pathak the learned Special PP submitted that there is a syndicate functioning who imports gold in India by evading revenue and thereafter the said gold bars are reduced in small pieces and circulated in the market. He submitted that raid was conducted on R.V. Gold and substantial items were recovered with logo of RBBL were found. He further submitted that the witnesses in the present crime have clearly stated that it is the applicant at whose instance gold is being smuggled in India. That the applicant is involved in melting the said gold bars and reducing it into small pieces. He submitted that the applicant made himself scarce when the summons was issued on him for investigation and unless and until the

applicant is custodially interrogated large quantity of gold circulated by the applicant cannot be detected. He further submitted that for the effective investigation in the present crime the custody of the applicant is necessary. He lastly prayed that the present application be therefore, rejected.

5) The record reveals that applicant is one of the main persons of the cartel which is indulging in smuggling of gold in India. The investigation reveals that though the said firm namely R.V.Gold stands in the name of Kishore Trivedi, the said person is a fictitious entity. That Mr. Vaibhav Shah is the owner of M/s. Nirvi Impex and at his instructions Anand Dubey used to smuggle and transfer gold to R.V.Gold.The investigation further reveals that R.V.Gold is in fact a company managed and owned by the applicant Rajkumar Gupta. It is the modus operandi that foreign made gold is being smuggled in India and subsequently it is either melted or converted into small pieces and biscuits and circulated in the market. The investigation further reveals that the applicant is co conspirator and has indulged in massive fraud in evading appropriate custom duty leviable on such goods and thereby causing loss to national exchequer by adopting the aforesaid modus operandi for his personal gain. It is in fact revealed by the Investigation Agency that the applicant is the kingpin in smugging the gold in India. The present case appears a deep rooted criminal conspiracy to smuggle gold into this country. It clearly appears that more

smuggled gold can be recovered after the custodial interrogation of the applicant and the larger public interest demands that the applicant be interrogated by the investigation agency.

6) After taking into consideration the serious allegations against the applicant and the gravity of the offence, this Court is of the view that applicant cannot be protected by pre arrest bail.

7) Application is accordingly rejected.

(A.S.GADKARI, J.)