

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

ANTICIPATORY BAIL APPLICATION NO.977 OF 2016

Afzal Gaus Mohinuddin Shaikh

.... Applicant

versus

Directorate of Revenue & Intelligence
Mumbai & Anr.

... Respondents

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- Mr.Vikram Nankani a/w Mr.C. Subba Reddy a/w Anish Ashok Desai, Advocate for the Applicant.
- Miss Rebecca Gonsalvez for the Respondent.
- Mrs.P.P. Shinde, APP for the State/Respondent.

CORAM : A.S.GADKARI, J.
DATE : 27th APRIL, 2017.

P.C. :

1. The applicant is apprehending arrest by the Respondent No.1 DRI in File No.DRI.F.No.DRI/MZU/D/INT-31/2015, Mumbai Unit, filed for contravention of section 135(1) (a) (d) of the Customs Act.
2. Heard the learned counsel for the applicant and the learned Spl.PP at length and also perused the documents annexed to the applicant and record of the investigation.

3. It is the case of prosecution in nutshell that the applicant is an exporter of garments and other goods. That based on intelligence, the premises of two exporters were searched on 23/07/2015 and several documents and records came to be seized. It revealed to the investigating agency that the bills showing export of goods under bogus shipping bills came to be procured by one Suheil Ansari, who according to prosecution, had issued fictitious bills in the name of different firms without actually supplying goods. That the applicant in connivance with other accused persons in fact did not export any goods, but only procured bills without actual receipt of any goods and subsequently claimed monetary benefit by way of drawback from the Government exchequer.
4. The record reveals that the applicant was granted interim relief by an order dated 20/06/2016. That in pursuance of the orders passed by this Court, prima facie, the applicant has attended the investigating officer on 25 occasions and his statement u/s 108 of Customs Act is recorded 25 times.
5. A useful reference at this stage can be made to the

Constitution Bench judgment of the Supreme Court in the case of Ramesh Chandra Mehta, versus, State of West Bengal, reported in AIR 1970 SCC 940.

The Supreme Court has held that a Customs Officer is not a member of police force. He is not entrusted with the duty of maintain law and order. He is entrusted with power which specifically relates to the collection of customs duties and prevention of smuggling. A Customs Officer exercises power to make an enquiry under the Customs Act, cannot submit a report u/s 173 of the Code of Criminal Procedure. That powers are conferred upon him primarily for collection of duty and prevention of smuggling. That he is for all purposes an officer of the revenue. Thus, a Customs Officer is under the Act of 1962, not a Police Officer within the meaning of section 25 of the Evidence Act and the statements made before him by a person who is arrested or against whom enquiry is made are not covered by section 25 of the Evidence Act.

The Supreme Court in the case of Siddhram S. Mehetre, versus, State of Maharashtra, reported in AIR 2011 SCC 312 in

paragraph No.122 while enumerating the factors and parameters which can be taken into consideration while dealing with the anticipatory bail has laid down that, where the accusation have been made only with the object of injuring or humiliating applicant by arresting him or her, the Court may consider the said application.

6. As stated earlier, the applicant has attended the Investigating Officer on 25 occasions and his statement u/s 108 of the Customs Act has been recorded 25 times. The learned Spl. P.P. fairly submitted that as a matter of fact in some of the statements recorded u/s 108 of the Customs Act, the applicant has already confessed his guilt. Despite the said fact, the custody of the applicant is being sought for alleged further investigation. It prima facie appears to me that once the applicant confessed about his guilt, it suffices the purpose of interrogation by the investigating agency carrying out investigation/enquiry under the Customs Act. It further reveals that investigation of the present crime is based purely on documents and is already possessing the concerned documents.

7. In this background it clearly appears to this Court that the thrust of investigating agency for custodial interrogation of the applicant is malafide. It further appears that the custodial interrogation of the applicant is being sought to extract further confession and/or to implead other co-accused in the present crime. It also appears to this Court that the custodial interrogation is being sought only with that object of injuring or humiliating the applicant by arresting him.
8. In view of the above, the interim granted by order dated 20/06/2016 is hereby confirmed. However, the applicant is directed to attend the investigating officer as and when called for between 11.00 a.m. to 02.00 p.m. and to join process of investigation till filing of the final report/complaint. It is needless to mention that before calling the applicant to the police station, the investigating officer shall issue a notice u/s 160 of Cr.P.C. thereby stating the date and the aforesaid time.
9. The application is allowed in aforesaid terms.

(A.S.GADKARI, J.)