IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPTORY BAIL APPLICATION NO. 1306 OF 2017

Sadanand Rokade ...Applicant
Versus
State of Maharashtra ...Respondent

Mr. Uday P. Warunjikar i/b Mr. Neelesh Vasant Kalantri for the Applicant

Ms. Anamika Malhotra, A.P.P for the Respondent-State

PI Mr. Dattatray Bajirao Kindre from Nhava Sheva Police Station, Navi Mumbai, is present

CORAM : REVATI MOHITE DERE, J.
TUESDAY, 25th JULY, 2017

P.C.

1. Heard learned Counsel for the parties.

2. By this application, the applicant seeks pre-arrest bail in connection with C.R. No. I-60 of 2017 registered with the Nhava Sheva Police Station, Navi Mumbai, for the alleged offences punishable under Sections 420, 465, 467, 468, 471, 34 of the Indian Penal Code.

3. Learned Counsel for the applicant submits that the applicant was only an employee of Ulhas Gate, a Customs House agent. He

submitted that the applicant, as an employee, was doing his job and that he was not concerned with the transaction, which took place between his employer-Ulhas Gate and Mahesh Ghegade. It is submitted that the applicant's statement has been recorded under Section 108 of the Customs Act, and that the applicant has cooperated with the investigation and hence, his custody is not required.

4. Learned A.P.P opposes the application. She has tendered the statement of the applicant recorded under Section 108 of the Customs Act. She submitted that the applicant alongwith his employer-Ulhas Gate and Mahesh Ghegade, had misdeclared the product and its value, by substituting Calcium Carbonate in place of Uric Acid. She submitted that the applicant has received commission for the same. She also relied on the statements of the applicant, in particular, the statement recorded under Section 108 of the Customs Act on 26th May, 2017, to show the complicity of the applicant. She further submits that M/s. D. J. Enterprises, M/s. Ambica Trading and M/s. Royal Enterprises are fictitious companies.

5. Perused the papers. According to the prosecution, the applicant, in connivance with other accused, exported Calcium Carbonate instead of Uric Acid, by misdeclaring the price and its description and as such, defrauded the Government. It is alleged that in the process, the applicant alongwith other accused also forged documents. It appears from the statements of the applicant that the Company was to export Uric Acid. It also appears that the sample which was sent for testing to DYCC was not the sample drawn from the shipment, but was the sample handed over by co-accused Mahesh Ghegade, to the applicant, which the applicant had collected from outside and thereafter, the test memo sample was handed over by him, to the TA at JWR. He has stated that this had taken place sometime in December, 2016. He has further stated that thereafter again, such samples were taken from Mahesh Ghegade to show that the export shipment contained Uric Acid, when infact, it contained Calcium Carbonate. He has further stated that he had received money for clearance of the export shipments, of three exporters i.e. M/s. D. J. Enterprises, M/s. Ambica Trading and M/s. Royal Enterprises. He has further stated that he had received a sum of approximately Rs. 3,25,000/- to Rs. 3,50,000/- from

his employer, for attending the clearance work of the Uric Acid consignments. The said amount received by the applicant was, over and above his salary. The applicant has in his further statement stated that, he had received rubber stamps of M/s. Paladin Paints and Chemicals Pvt. Ltd. and was instructed by co-accused Mahesh Ghegade that all the papers should be prepared in their office and should be signed by him i.e. the applicant. He has further stated that his employer and he, had accepted this offer and had prepared papers in their office, by using their office computer and thereafter, his employer had filed the shipping bill online. He has further stated that he has signed on all the documents of the export consignment, having declaration of Uric Acid exported in the name of M/s. Ambica Trading, M/s. D. J. Enterprises and M/s. Royal Enterprises. He has further stated that since the actual exported goods were not Uric Acid, co-accused Mahesh Ghegade provided them with samples of Uric Acid from outside and handed over the same to him, for forwarding the same for testing at DYCC. The two statements of the applicant show, that he was well aware of the nature of transaction, had forged documents and had misguided the Customs Officers, by exporting Calcium Carbonate instead of Uric Acid, but had handed over Uric Acid samples. It also appears, that the Companies i.e. M/s. D. J. Enterprises, M/s. Ambica Trading and M/s. Royal Enterprises, are fictitious Companies.

6. Considering the aforesaid and the role of the applicant, this is not a fit case to grant pre-arrest bail to the applicant. Accordingly, the application is rejected.

7. It is made clear that the observations made herein are *prima facie*, for the purpose of deciding this application and if an application for regular bail is filed, the same shall be decided on its own merits, uninfluenced by the observations made in this order.

REVATI MOHITE DERE, J.