

Anand

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

BAIL APPLICATION NO.1886 OF 2017

Ben Joseph Tharakan

.Applicant

Vs.

The State of Maharashtra & anr.

.Respondents

Mr.S.B.Shelar, Advocate, for the Applicant

Ms A. Malhotra, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 18.08.2017

P.C.

. Heard learned counsel for the parties.

2. By this Application, the Applicant seeks his enlargement on bail in connection with R.A.203 of 2017, pending before the Additional Chief Metropolitan Magistrate, 8th Court, Esplanade, Mumbai. The Applicant alongwith other co-accused has been arrested for contravening Sections 111(d), 111(m), 132, 135(1)(A) and 135(1)(i) of the Customs Act, 1962 and Sections 25, 29 and 30 of the Arms Act, 1959 r/w Rule 42, Rule 84(a), Rule 87, 88 and Rule 89(1) of Arms Rule, 2016 issued by Ministry of Home Affairs notification dated 15.07.2016.

3. Learned counsel for the Applicant submits that co-accused – Rajesh Goswami and Vikram Kulshreshtha have been enlarged on bail by this Court (Coram : Revati Mohite Dere, J.) vide Order dated 14.08.2017 passed in Cri.B.A.No.1840 of 2017. He submits that the Applicant is better placed than the co-accused who have been enlarged on bail. He submits that the Applicant is a Customs Broker (Clearing Housing Agent) of the importer M/s. Airsoft Gun India.

4. Learned APP opposes the Application. She has tendered an Affidavit of Eishvaryesh Bharadwaj, Assistant Commissioner of Customs. Same is taken on record.

5. Perused the papers. On 13/6/2017, based on a specific intelligence from the Directorate General of Vigilance, Mumbai (DGoV), officers of Special Intelligence and Investigation Branch, Import (S.I.I.B. (I), Air Cargo Complex, Mumbai, intercepted a consignment covered vide Bill of Entry (B/E) No.9616942/09-05-2017 filed in the name of M/s.Airsoft Gun India, Ludhiana. 100% Examination of the consignment was carried out under a Panchanama on 13/06/2017. In the aforesaid B/E, the goods were declared as “Metal Toy Guns”, however, on examination “Blank Firing Guns” were found.

On examination of the goods, total 200 pcs of 'ARAL" brand Blank Gun were found packed in 10 cartons instead of goods declared as "ARAL METAL TOY GUNS" in the said B/E. It appears that the applicant no.1 is in the supply of Toy Guns to the Film Industry, Television Serials and in the dramas etc., and that the said toy guns are used for the purpose of action scenes and sequences. It appears that the seized Metal Toy Gun was sent by the Assistant/Deputy/Commissioner of Customs, Mumbai, to the Truth Labs, Hyderabad, for testing and seeking their opinion. Pursuant thereto, the Truth Labs, Hyderabad had sent their report dated 14th June, 2017. In the said report it is stated as under:-

“Under gazette of Arms Rules 2016 (July) notification page no.154, para no.42, the pistols which are used in TV shows, films, theatrical performances and for signaling, starting of races, the person possessing, carrying and using the gun should obtain license under the arms act.

However, since there is an obstruction inside the barrel of the gun in this particular case there will be no discharge of bullets and is non-lethal to humans.”

6. It appears that earlier, Truth Lab Forensic Services had reported, that as the goods were non-lethal, they did not come under the

purview of the Arms Act, however, after investigation started, Truth Lab vide their letter dated 14th June, 2017, retracted from their earlier report and gave the report as set out hereinabove. Admittedly, co-accused - Rajesh Goswami and Vikram Kulshreshtha have been enlarged on bail by this Court vide Order dated 14.08.2017. The Applicant is a Customs Broker (Clearing Housing Agent) of the importer M/s. Airsoft Gun India. Admittedly, the goods have been seized. As far as breach of licence and evasion of Customs Duty is concerned, the department has already initiated enquiry as against the Applicant.

7. Considering the aforesaid, further custody of the Applicant is not required. Accordingly, the Application is allowed and the Applicant is enlarged on bail on the following terms & conditions:-

ORDER

- (i) The Applicant be enlarged on cash bail in the sum of Rs.25,000/-, for a period of four weeks;
- (ii) The Applicant shall thereafter furnish a P.R.Bond in the sum of Rs.25,000/- with one or two sureties in the like amount, within a period of four weeks of his release on cash bail;
- (iii) The Applicant shall attend the Customs, Air Cargo, Mumbai, every Monday and Tuesday, between 10.00 a.m. to 2.00 p.m.,

for a period of four weeks and thereafter as and when called, till the filing of the charge-sheet;

(iv) The Applicant shall deposit his passport with the concerned investigating officer, within 48 hours of his release;

(v) The Applicant shall not leave the country, without the permission of the trial Court.

8. The Application is allowed and disposed of in above terms.

9. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

Parties to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)