**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**ANTICIPATORY BAIL APPLICATION NO.2003 OF 2017**

**SHANTARAM DNYANESHWAR GAIKWAD )...APPLICANT**

**V/s.**

**THE STATE OF MAHARASHTRA & ANR. )...RESPONDENTS**

Mr.Aaditya Gore, Advocate for the Applicant.

Ms.Veera Shinde, APP for the Respondent - State.

**CORAM : A. M. BADAR, J.**

**DATE : 17th NOVEMBER 2017**

**P.C. :**

1 The applicant/accused, by this application, is seeking pre-arrest bail in case of import of prohibited goods by M/s.A1 Rehman Impex (IEC) vide F.No.SG/INV-40/UKJ/2017-18 SIIB (I)under investigation of respondent no.2 Additional Director General, Directorate of Revenue Intelligence, Mumbai Zonal Unit, Mumbai.

2 Heard the learned advocate appearing for the applicant/accused. He argued that the present applicant/accused is working as a Clerk for M/s.Sharda Clearing and Forwarding Agency Pvt. Ltd. (CHA) Mumbai, and the Director of the said Company namely Ravindra Haldankar is detained by the Directorate of Revenue Intelligence. It is the case of the prosecution that Ravindra Haldankar came to know about finding of gold in the consignment through the present applicant/accused. The learned advocate by placing reliance on paragraph 7 of the reply filed by the prosecuting agency before the Sessions court, argued that complicity of the present applicant/accused in the alleged crime is not established. He drew my attention to the Remand Application filed by the prosecuting agency reflecting statement of Ravindra Haldankar and next Remand Application reflecting the case of the prosecution and argued that, in the Remand Application there are no allegations against the present applicant/accused. The Remand Application disclosed role of Ravindra Haldankar along with co-accused Illyas, Zuber, Aslam and Rashid. The learned advocate further argued that the present

applicant/accused, as seen from the reply filed by the respondent no.2, had no prior knowledge about concealment of gold in the consignment. It is erroneously mentioned that he was not available for the purpose of investigation. With this, the learned advocate submitted that the applicant/accused deserves protection from the arrest by the Directorate of Revenue Intelligence.

3 The case of the prosecution is reflected in paragraphs 6 and 7 of the say filed by the Directorate of Revenue Intelligence in the Sessions court. It reads thus :

> "**6** On alert of Container Scanning Division, the officers examined the Container no.BSIU9616714 said to contain Ladies, Girls, & Baby Bed room slippers which was presented for examination by the Customs Broker M/s.Sharda Clearing & Forwarding Agency Pvt. Ltd, vide Bill of Entry no.3350653 dated 22.09.2017 (IGM no.2174891 dated 19.09.2017) of Importer M/s. A1 Rehman Impex IEC no.0308061080 having his address as 79, Kambekar street, shop no.1, Vihidna Building, Mumbai 400003. The said container was found sealed with Customs bottle seal bearing

no.858263. During the examination of the said container by the Customs officers they found two white HDPE woven bags at the extreme right rear end of the container which appeared to be abnormally heavy. One of these two white HDPE woven bags having marking “LADY 25 DOZ TO ARI FROM LY 11/260” was opened in which bed room slippers were found. Twenty Eight of these slippers were found to be quite heavy and on cutting of the sole of these 28 slippers it was found that eaach of these 28 slippers contained a heavy metal bar each wrapped in carbon papers and on un-wrapping the carbon papers they were found to contain yellow coloured metal bars purported to be gold bars of one kilograpm each of foreign marking. Thereafter, the second heavy white HDPE woven bag having marking “LADY 25 DOZ.TO ARI FROM LY 189/256” was also opened which contained bedroom slippers, ten of which were found to be quite heavy. Therefore, the sole of these ten slippers were also cut open. On opening the soles of the slippers it was found that each of these 10 slippers was also found to contain heavy metal bar each wrapped in carbon papers. On unwrapping the said carbon papers they were found to contain yellow metal bars purported to be gold bars of one kilogram each having foreign marking. Accordingly, a total of 38 yellow metal bars purported to be gold of one kilogram each totally weighing 38 kgs (marked weight) were recovered from the said container. The said 38 yellow metal bars, purported to be of gold, the two empty white HDPE woven bags and the 38 slippers from which the yellow metal bars were recovered. Shri Pravin R. Patel of M/s.Sony Shivlal Bros Jewellers, Government authorised valuer, (CAT VIII-329) examined and assayed all the said 38 yellow metal bars and declared all of them to be gold bars of purity 999.9% of 24 carats, totally valued at Rs.11,71,54,000/- (LMV) and as per Customs Notification No.87/2017-CUSTOMS (N.T.) dated 15.09.2017, Rs.10,71,12,120/-. The said 38 gold bars were seized under the reasonable belief that the same were being smuggled into India in violation of the provisions of the Customs Act, 1962 and were therefore liable for confiscation there under.

**7** Shri Shantaram D. Gaikwad is working as a Customs and Dock Clerk for M/s.Sharda Clearing & Forwarding Agency P.Ltd., (CHA) Mumbai, where

> Shri Ravindra V. Haldankar is the Director. The statement of Shri Ravindra V. Haldankar was recorded under Section 108 of the Customs Act, 1962, wherein he stated; that he sent his employee Shri Shantaram D. Gaikwad to attend the examination of the said container; that he was informed of about the concealment of gold in the said container by his employee Shri Shantaram Gaikwad."

4 Remand Application under Section 104 of the Customs Act, 1962, moved by Deputy Commissioner of Customs, SIIB (Import) in Remand Application No.290 of 2017 reflects statement of the contents of statement of Ravindra Haldankar recorded under Section 108 of the Customs Act, 1962. According to the prosecution case, the present applicant/accused is working as a Customs and Dock Clerk for M/s.Sharda Clearing & Forwarding Agency P.Ltd., (CHA) Mumbai, of which arrested accused Ravindra Haldankar is a Director. According to the prosecution case, 38 yellow metal bars found to be gold of purity of 999.9% valued at Rs.11,71,54,000/- were found to be concealed in the consignment which had concern with

M/s.Sharda Clearing & Forwarding Agency P.Ltd., (CHA) Mumbai. Director Ravindar Haldankar in his statement under Section 108 f the Customs Act, 1962, has stated that he was informed about the concealment of gold in the said container by the present applicant/accused.

5 Anticipatory bail to a large extent intrudes the investigation of a crime. It is likely to interfere with the statutory power of the Investigating Officer to investigate the crime in question. The court is, therefore, required to be cautious and circumspect while exercising such discretionary jurisdiction. It is well settled that such discretionary jurisdiction cannot be exercised to protract liberty of a person against whom there are serious allegations. The crime in question has large economic ramification. In all, gold costing Rs.11,71,54,000/- was found to be smuggled into India violating the provisions of the Customs Act, 1962. The present applicant/accused was working as a Customs and Dock Clerk for the said consignment. Effective investigation of such crime requires custodial interrogation of the

present applicant/accused. That will be a more elucidation oriented rather than questioning the present applicant/accused after insulating with him with an order under Section 438 of the Code of Criminal Procedure.

6 Considering the nature of crime and availability of evidence against the present applicant/accused, no case for anticipatory bail is made out. Hence, the order :

**ORDER**

The application is rejected.

**(A. M. BADAR, J.)**