IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3876 OF 2019
(Order is corrected as per order dated 21st August 2019)

Sandeep Ingle .. Petitioner
Vs.
1. Directorate of Revenue
through Intelligence Officer
& Ors. .. Respondents

Mr.Sujay Kantawala I/b Mr.Robin Thomas George for petitioner.

Ms.Rebecca Gonsalves for respondent No.1.

Mrs. P.H. Kantharia for respondent No. 3.

Mr.K.V. Saste, APP for respondent No.4-State.

CORAM : RANJIT MORE &
N.J. JAMADAR, JJ.

DATE : 14TH AUGUST 2019

P.C.

1 Heard the learned counsels for the respective parties and the learned APP for the State.

2 Perused the order dated 26th July 2019 passed by this Court. The petitioner is alleged to have committed an offence punishable under section 135 of the Customs Act, 1962. However, the said offence is compoundable under sub-section (3) of section 137 of the Customs Act, 1962. The petitioner has already preferred an application under the said section for compounding the offence. Having noted these facts, by way of ad-interim relief, we released the petitioner on bail on executing P.R. Bond in the sum of Rs.50,000/- on furnishing one or two solvent sureties in the like amount to the satisfaction of the trial Court.

3 Shri Kantawala, the learned counsel for the petitioner invited our attention to the relevant provisions of the Customs Act, 1962 as well as Customs (Compounding of Offences) Rules, 2005, especially Rule 4 thereof which deals with the procedure to be followed, upon receipt of application under section 3, and submitted that the Adjudicating Authority is required to quantify and determine the amount of customs duty. Once this amount is determined, the petitioner can pay the amount and the offences can, thereafter, be compounded by the Compounding Authority. Shri Kantawala further submitted that since the subject case is town seizure, the Adjudicating Authority for the purpose of quantifying and determining the amount of customs duty is the Commissioner (Preventive), and the Authority for compounding the offences is the Chief Commissioner of Customs. The counsel also submitted that directions may be given to the concerned authorities to adjudicate the customs duty and decide the petitioner's application for compounding the offences arraigned against him.

4 Ms.Gonsalves, the learned counsel for the respondent No.1 and Ms. Kantharia, the learned counsel for respondent No.3 strongly oppose the application on the ground that the investigation in the **subject case** is in progress and, therefore, there is no need of issuance of any direction at this stage.

5 Upon consideration of the petition, what we find is that the offence is punishable under section 135 of the Customs Act, 1962 and the allegations are that the exotic birds have been smuggled/imported in India. Whatever may be the situation, the fact remains that the offence is compoundable. The offence was registered on 16th June 2019 and thus enough time was available for the respondent No.1 to carry out investigation. The respondent No.1 can still continue with the investigation.

6 However, we find that under the provisions of section 137 of the Customs Act, 1962, the offence can be compounded either before or after filing the proceedings and, therefore, the prayer of the petitioner seeking directions regarding adjudication of the amount of customs duty for compounding the offences is reasonable. In our view, in the light of the express statutory provisions permitting the compounding of the offence and the rules which prescribe the procedure for dealing with the application for compounding, the Authorities cannot show disinclination to entertain and determine the application for compounding the offence.

7 We, therefore, pass the following order :-

-: O R D E R :-

(1) The Petitioner shall co-operate in the investigation and shall remain present as and when called by the investigating agency. The Petitioner is, however, permitted to have advocate accompanying him at visible but not audible distance during his interrogation by the officers of Respondent No.1 (investigating agency) and recording of his statement shall be video-graphed in terms of the decision of the apex Court in ***Vijay Sajnani v. Union of India [Cri. M. P. No. 10117 of 2012 in WP (Cri.) No. 29 of 2012]*** and ***Rajinder Arora v. Union of India [WP (Civil) No. 389 of 2010 order dated 7th December 2010]***.

(2) If necessary, the Directorate of Revenue Intelligence shall issue a Show Cause Notice under section 124 of the Customs Act, 1962 and the adjudicating authority, namely, the Commissioner of Customs (Preventive) shall hear the petitioner and quantify and determine the amount of custom duty/fine and penalty, if any, as expeditiously as possible.

(3) After the adjudication of the above Show Cause Notice, the Compounding Authority, namely, the Chief Commissioner of Customs shall decide the Petitioner's application for compounding of the offence as expeditiously as possible and in accordance with law.

(4) Interim bail granted earlier to the Petitioner stands confirmed.

(5) In the light of above writ petition stands disposed of.

[N.J. JAMADAR, J.] **[RANJIT MORE, J.]**