IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 361 OF 2019

Imran Ebrahim Teli and Ors. ..Applicants

Versus

Intelligence Officer and Anr. ...Respondents

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Mr. Prem Keshwani i/b Sachwani and Associates for the Applicant.
Mr. Jitendra B. Mishra, Special P.P. for Respondent No.1 (DRI)
Mr. S. H. Yadav, APP for the State-Respondent No.2.

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CORAM : PRAKASH D. NAIK, J.
DATE : 15th November, 2019

PC :

1. The applicants are seeking modification of order dated 4th October, 2019 passed by the Sessions Court by deleting the condition (b) viz. deposit of Rs. 4,39,49,403/- (Rupees Four Crores, Thirty Nine Lakhs, Fourty Nine Thousands, Four Hundred and Three).

2. The applicants had preferred an application for bail before the Sessions Court which was numbered as Bail Application No. 2407 of 2019. The learned Sessions Judge by order dated 4th October, 2019 granted bail to the applicants in connection with RA No. 194 of 2019 registered in DRI, Mumbai under Sections 135(1) (a)(b) of the Customs Act 1962, on their executing P.R. bond of Rs. 50,000/- each with one or two solvent sureties each in the like amount.

3. The applicants were directed to deposit the tax amount of Rs. 4,39,49,403/- (Rupees Four Crores, Thirty Nine Lakhs, Fourty Nine Thousands, Four Hundred and Three) in the office of DRI, Mumbai. It is was further directed that after depositing the amount their bail be accepted. The order also stipulated several other conditions. The applicants are aggrieved the condition to deposit the amount.

4. The applicant No.1 thereafter preferred an application for modification of the said order before the Sessions Court for deleting the said condition. The application was rejected by order dated 16th October, 2019.

5. Learned advocate for the applicants submitted that the condition to deposit is harsh. Although the applicants were granted bail by order dated 4th October, 2019, they could not avail the bail facility on account of the said condition. It is submitted that the duty of 200% was levied on the ground that the goods in question were brought from Pakistan. However, the goods were originated from Oman. This fact is fortified by the documents on record. The prosecution case is based on inferences which is not supported by any evidence. It is further submitted that the applicants were in custody and no instructions were given to the advocate representing them that they are willing to deposit the amount. It is further submitted that the order of the Sessions Court would indicate that

the applicants are ready to deposit the differential duty subject to adjudication proceeding. It is submitted that the factual position is that the goods are in custody of respondents and the applicants continue to remain in custody for want of depositing the amount. It is further submitted that the communication dated 16th October, 2019 was issued by Deputy Commissioner of Customs intimating that subject consignments covered under the bills of entries dated 01-08-2019 has been allowed for provisional release under Section 110 (A) of the Customs Act of executing P.R. bond of Rupees Eight Crores and bank guarantee of Rupees Eight Crores with self renewal clause.

6. The respondent has filed reply, opposing the relief sought in this application. Learned advocate for the respondent submitted that the applicants had voluntarily agreed to deposit the amount during the course of hearing of the application for bail and submissions in that regard were made by the advocate representing them. The contention that the deposits would be made subject to adjudication was rejected by the Sessions Court. The application for modification of the order was also rejected by the Court. The investigation is still in progress. The offence is serious. The statement of Applicant No.1 was recorded under Section 108 of Customs Act, in which he admitted that the Pakistan Origin Dry Dates were imported via Oman

with the help of certain Pakistani persons currently staying in Oman and that around 40 consignments of Pakistan origin dates were imported. The Applicant No.1 has admitted that he was in the business of Wet Dates prior to imposition of 200% BCD on Pakistan origin goods and stopped the same after increase in import duty. During this period he approached the Applicant No.4 and thereafter, Applicant No.1 shifted from Wet Dates to import of Dry Dates for ultimate sale to Applicant No.4. He admitted that that Dry Dates imported in the name of M/s. K.B.N. Tradelinks were actually imported by Applicants No.3 and 4. It is further submitted that the applicants are actively involved in the import of Pakistani Origin Dry Dates. They were arrested after analysis of electronic evidence, documentary evidence gathered during the course of investigation.

7. The case of the prosecution is that Importer by name M/s. K.B.N. Tradelinks was importing Dry Dates by Pakistan origin by routing them through Oman. They were declaring the country of origin as Oman to evade payment of basic Custom duty @ 200% on all goods originated or exported from Pakistan imposed vide Notification No. 05/2019 dated 16th February, 2019. The statement of the applicant No.1 was recorded during the course of the investigation under Section 108 of the Customs Act, on 5th September, 2019. He allegedly admitted that goods were of

Pakistan Origin and not Oman. In Paragraph 15 of order dated 4th October 2019, The learned Sessions Judge has recorded submission of the advocate representing the applicants that the applicants are ready to deposit, subject to adjudication proceeding. The Court further observed that the adjudication process has no concern in the proceeding before the said Court. It is further recorded that the applicants are ready to deposit differential duty calculated by respondent. The counsel for the respondents then submitted that subject to deposit the amount of Rs. 4,39,49,403/- (Rupees Four Crores, Thirty Nine Lakhs, Fourty Nine Thousands, Four Hundred and Three), the bail application be considered. The learned Judge therefore recorded that in view of the submission of both sides and the statements placed by the respondents about calculation of differential amount, the Court granted bail on condition stipulated in the order which included the deposit of the said amount. The Misc. Application for modification of the said order was rejected by the Sessions Court by order dated 16-10-2019 while rejecting the said application it is observed that, it appears that in view of submission of the advocate for applicants, the Court had ordered to release the applicant on bail by depositing the amount. It was also observed that the condition was imposed on the basis of submission of advocate for the applicant and the application is devoid of merits. It thus appears that the applicants had agreed to deposit the said amount. In these circumstances, no case for modification of the said order is made out. Hence Application stands rejected and disposed of.

(PRAKASH D. NAIK, J.)