IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 11 OF 2018

The Investigating Officer of Customs,
Special Intelligences & Investigation
(Branch) Export, JNCH, Nhavasheva. … Applicant

Versus

Santosh Prakashchandra Doshi & Anr. … Respondents

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Mr. Siddharth Sharma a/w Ms. Ameeta Kuttikrishnan, Advocate for the Applicant.
Mr. R. M. Pethe, APP for the Respondent No.2 – State.
Mr. Harihar Bhave a/w Ms. Divya Menon, a/w Ms. Ridhi Jhaveri a/w Ms. Sanjeev Rawat, Advocate for Respondent No.1.

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CORAM : PRAKASH D. NAIK, J.

DATE : 30th JULY, 2021

PER COURT:

1. This is an application for cancellation of bail granted to the respondent No.1.

2. The applicant is the original complainant/prosecuting agency. The respondent No.1 was arrested on 22nd March, 2017 and was produced before the learned J.M.F.C. Uran. The offences were allegedly under Section 135(1)(b)(c) and (d) of the Customs Act punishable under Section 135(1)(i)(A) and (D). He was remanded to custody till 5th April, 2017. Application for bail was

preferred before the Court of learned J.M.F.C. Uran which was allowed vide order dated 24th March, 2017. The said order was challenged by the applicant before the Court of Sessions. The application for cancellation of bail was rejected by the Sessions Court vide order dated 10th November, 2017 and the order passed by the learned J.M.F.C. Uran granting bail was confirmed.

3. The contention of the applicant is that both the orders are bad in law. The observation of the learned Magistrate as well as learned Sessions Judge that the offence is of bailable nature was erroneous. The order was contrary to the provisions of law. The learned Sessions Judge has committed error while rejecting application for cancellation of bail and erred in confirming the order of the learned Magistrate. The total FOB value declared for 68 shipping bills was Rs. 96.00 Crores and the export benefit claimed was Rs.3.84 Crores. The exporter has taken excessive undue benefit by way of MEIS and drawback. The exporter had accepted similar goods in the past vide consignment covered under 53 shipping bills and thereafter, combined show cause notice for 68 shipping bills under Sections 124 of the Customs Act was issued and hence issued show cause notice for present 15 shipping bills cannot justified that the investigation was only for 15 shipping

bills.

4. Learned counsel for the respondent No.1 submitted that the bail was granted to the respondent No.1 on 12th July, 2017. No case is made out for interfering in the said order after a period of more than three years. Apart from that there is no error in law in granting bail to the respondent No.1 . The learned Magistrate had considered the factual aspects and had after assigning reasons granted bail to the respondent No.1. The application for cancellation of bail was rejected by the learned Sessions Judge by giving detailed reasons which do not call for any interference. He further submitted that M/s. Masumi Overseas Pvt. Ltd had preferred Writ Petition No. 10138 of 2018 before the Hon'ble High Court challenging the action of the customs/exports (NS-II) in passing prohibitory order in relation to personal properties of the directors of the said Company and the show cause notice dated 20th December, 2016 calling upon them as to why certain action should not be taken. The High Court by its order dated 6th December, 2018 allowed the petition stating that the communication of the customs preventing transfer of property, attachment of bank accounts and directing the respondent No.1 to refund the amount of Rs. 1.50 Crores on executing bank guarantee.

5. The respondent No.1 was arrested on 22nd March, 2017 has reflected in arrest memo under Section 104 of Customs Act 1962. He was produced before the learned J.M.F.C. for Judicial custody. On 23rd March, 2017 the learned J.M.F.C. Uran remanded him to judicial custody till 5th April, 2017. The respondent No.1 preferred an application for bail before the said Court on 24th March, 2017. The case relates to alleged misused of export incentive scheme like drawback, MEIS in respect of 15 shipping bills. The application was opposed by the Investigating Agency. The accused contended that he had outsourced the export material to procure goods under contract with the customers. The Company was not involved in the process of outsourcing. The prosecution had recorded the statement of the accused. Learned Magistrate heard both the sides and by assigning reasons granted bail to the respondent No.1. While granting bail it was observed that the application was strongly opposed on the ground that, accused has misdeclared FOB value. During investigation of 15 shipping bills, the prosecution found another 53 shipping bills. FOB value for 68 bills was Rs.96 Crores. Therefore, value of drawback/MEIS was Rs.3.84 Crores. Hence it was contended that offence was not bailable. from the perusal of remanding report it is apparent that the prosecution has mentioned FOB value for 15 Shipping bills Rs.

23,07,06,784/- and drawback which was claimed of Rs. 46,14,134/-. It further reflects from the remand report that further 53 shipping bills are under investigation. The statement of the accused is already recorded and show cause notice under Section 124 of Customs Act was issued in respect to 15 shipping bills. The Court then considered whether the offence is bailable or non bailable. To deal with the said point it was observed that the remand papers refers to the investigation in file no. 15/2016 and that the value of the claim drawback in respect of 15 shipping bills is Rs.46,14,134/- and MEIS claimed was Rs.46,14,134/-. In this context the offence is categorised as bailable.

6. The said order was confirmed by the learned Sessions Judge. I have perused the order of Learned Sessions Judge which assigns detailed cogent reasons for confirming the order of the learned Magistrate. The order reflects that all the contentions of the applicant were dealt with and the application for cancellation of bail was rejected. The learned Sessions Judge had observed that there can be no doubt about the fact that the competent authority under the Customs Act taken into consideration the amount of previous shipping bills. However, what can be seen in the present case is that though, the Investigating Officer is aware of the fact

that there are 53 previous shipping bills by which accused exported similar goods and availed fraudulent drawback and MEIS, in spite of it, he had segregated those 53 shipping bills from 15 shipping bills of the present case. No show cause notice regarding entire 68 bills was brought to the notice of the Court. The offence is not registered on the basis of 68 shipping bills. Hence, in the present case the amount of past 53 shipping bills cannot be taken into consideration. The well reasoned order passed by the learned Sessions Judge also does not call for any interference. In the light of the order passed by the learned J.M.F.C. Uran as well as learned Sessions Judge, no case is made out to grant relief in this application.

ORDER

Criminal Application No. 11 of 2018 is rejected and disposed of accordingly.

(PRAKASH D. NAIK, J.)