IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 515 of 2022

Poonabhai Chandpara .. Applicant

Versus

The State of Maharashtra .. Respondent

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Mr.Anand Jondhale with Ms.Medha Jondhale, Rajnandini Jondhale i/b Jondhale & Co. for the applicant.
Mr. J.B. Mishra, Spl.P.P with Ashutosh Mishra and Ms.Rutuja Ambekar, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 5th JULY, 2022

P.C:-

1 The applicant, who is trading in diamonds, was issued summons u/s.108 of the Customs Act from the office of the Commissioner of Customs, Air Special Cargo, Andheri, Mumbai. He was summoned in connection with Non-realization of foreign remittance against the export of Cut and Polished Diamond under the Customs Act, 1962.

He apprehends his arrest and has approached this Court, seeking his release on bail, by submitting that he is ready to render his co-operation to the Commissioner of Customs and his custodial interrogation is not warranted.

2 Heard Mr. Anand Jondhale along with Medha Jondhale for the applicant and Advocate Mr.J.B. Mishra for the Commissioner of Customs.

On the basis of general intelligence and Data analysis, 21 Importer Exporter Code (IEC) were suspected to be indulging in export of cut and polished diamonds by using fraudulently acquired IECs, whose credentials as exporters were fake, fabricated and created with intent to create bogus entities. The IEC holders admitted that neither the goods belong to them nor the Companies were owned by them and they faked ignorance about the transaction being carried out through the IECs. On verification of the address, it is revealed that the said IECs are non functional and non-existent on the given address and their existence was only on paper and some unscrupulous persons were carrying out export in the name of these IECs.

It was also noticed by Customs Department that the proprietor/partner of these IECs on paper, are not the actual owner of goods being exported out of India, in respect of which the shipping bills have been filed and the shipping bills have been filed using these IECs and the past export of some of the exporters are substantial, both in terms of the number of shipments as well as quantum of FOB value involved. Further, the export remittance of all shipping bills filed, using these IECs have not been realized and even after lapse of time limit prescribed by the Reserve Bank of India, in it's guidelines, as per data based available with the Customs Department, and this aggregately was running into more than Rs.Five crore. The Reserve Bank of India informed that it do not conduct investigation against the defaulters.

3 During the course of investigation, statements of some of the proprietor/partners of the IEC holders and persons related to exports were recorded u/s.108 of the Customs Act and the role of the applicant has surfaced on record.

4 The case against him, as projected by the Department of Custom is, that one proprietorship company i.e. M/s.Ugam Impex (GSTIN No.27AGHPC9225C2ZO having address at JW 7110, Bharat Diamond Bourse, Bandra Kurla Complex, Bandra (East), Mumbai, is conducted by one Satish Chandpara, the son of the applicant and the company deal in sale and purchase of Cut and Polished diamond, but it is not into import/export. The applicant was responsible for exporting certain goods vide shipping bill No.6050327 dated 22/10/2020 and he admitted that he received commission from M/s.Ganesh Exports for providing export related services to them. The applicant, in his statement dated 23/11/2020, admitted that he had given his premises to one Shri Amir Bilakhia for sorting the export goods and Shri Amir used to represent M/s.Ganesh Exports.

During the course of investigation, the statement of Bilakhia Amir Mohd. is also recorded, who has filed the shipping bills in the name of M/s.Ganesh Export and admitted that his access card for entry in Bharat Diamond Bourse (BDB) was made on reference of the applicant who had rented a property in BDB, BKC, Mumbai.

The statement of Director of Customs Broker firm also implicate the present applicant, when he state that he received goods of shipping bill 6050327 from Amir Bilakhia who brought the goods from customs clearance and Amit Bilakhia was working for the applicant. It has surfaced during inquiry that actual owner of the goods, which were being exported on shipping bill no. 6050327 in the name of M/s.Ganesh Export, is the applicant and the Director of Customs broker firm M/s. Lingamma Logisol Pvt. Ltd, stated that he knew that the goods belong to the applicant.

The statement of Manager of the Customs broker firm M/s.A.B. Paul & Co, also make a reference to the applicant, as the one who used to export diamonds through various companies, and Amir Bilakhia was his employee who used to bring goods for clearance before custom authorities.

5 In the wake of the material that was collated, summons were issued to the applicant for the purpose of recording the statement as part of the investigation. The name of

the applicant has surfaced as handler of export goods, indicating his involvement in the matter of fraudulent attempt to export the goods which were seized by the custom authorities.

6 The Customs Department received the information that goods were attempted to be exported against the shipping bills filed in the name of bogus and fictitious and non-existent IECs and the owner of the goods were distinct than the IECs holders and goods were attempted to be exported on the basis of non-existent and bogus IECs. As a result, the goods became prohibited and the customs authority was under a reasonable belief that the goods are attempted to be exported in contravention to the provisions of Section 50 of the Customs Act, 1962 and Foreign Trade (Development Regulation) Act, 1992 and the goods were seized under Section 110.

The name of the applicant has surfaced as owner and the key conspirator behind these exports, by use of fake and fictitious IECs. Several IEC holders were summoned in relation to the fraudulent export being carried out by using 21 fake and fictitious IECs.

From the statements recorded u/s.108 of the Customs Act, the name of the applicant is surfacing as the mastermind of the entire conspiracy. He is suspected to be the key conspirator, as a person belonging to various groups, who are engaged in export, had specifically stated that the goods were brought by the applicant and the documents regarding the three companies i.e. M/s.Jayshree Enterprises, M/s. Shine Star Exports and M/s.Sea Shine Exports, were brought by the applicant as per the statement of one Nandkumar Pawar, Manager of one of the custom broker firm. He disclosed stated that the documents regarding the three companies were received by him on his e-mail, and even the bill for services rendered to these companies, were also forwarded on the same e-mail and these e-mails have link with the people working for the applicant.

7 The above material, gave rise to a reasonable suspicion/belief that the goods were attempted to be exported in contravention of the provisions of Section 50 of Customs Act and the investigation also include, though not limited to the angle of non-realization of foreign remittances, since past export of these IECs have been made in the name of the bogus entities. Since the name of the applicant has featured in several statements recorded during the course of investigation, as a handler of export goods and the total amount of diamonds exported by these companies, run approximately over 700 crores and despite the goods having already exported, the remittance of the same is not received through banking channels. The allegation is the amount of approximately 700 crore, has been siphoned out of the economy by using fraudulently acquired IECs.

8 The learned counsel Mr.Mishra has pointed out the need for custodial interrogation in the wake of the aforesaid

circumstances, and particularly, by referring to the affidavit filed by the Deputy Commissioner of Customs, Special Investigation and Intelligence Branch, on 12/3/2022. Along with the affidavit, statement of the applicant recorded u/s.108 of the Customs Act as well as the statement of the other witnesses who have implicated the present applicant are also placed on record.

From the statement on record, it is apparent that the custodial interrogation of the applicant is necessary, and it is to be noted that on 11/4/2022, the applicant was admitted to interim protection but, he has failed to report to the Customs Officer despite several summons being issued which apparently reveal that the applicant has very less regard for the procedure of law.

Since prima facie, his connect with M/s.Ganesh Export has surfaced through the various statements, I am not inclined to entertain the present application seeking protection from arrest.

Application is dismissed.

(SMT. BHARATI DANGRE, J.)

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