IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2113 OF 2022

Prerak Pankaj Shah ..Applicant

v/s.

The Appraising Officer of Customs
& Another ..Respondents

WITH
ANTICIPATORY BAIL APPLICATION NO. 2118 OF 2022

Prerak Pankaj Shah ..Applicant

v/s.

The Appraising Officer of Customs
& Another ..Respondents

WITH
ANTICIPATORY BAIL APPLICATION NO. 2189 OF 2022

Maulik Jayendra Mehta ..Applicant

v/s.

The Appraising Officer of Customs
& Anr. ..Respondents

WITH
ANTICIPATORY BAIL APPLICATION NO. 2218 OF 2022

Prerak Pankaj Shah ..Applicant

v/s.

The Appraising Officer of Customs
& Another ..Respondents

Mr. Pankaj D. Jain a/w. Ms. Tejashree Kamble i/b. P.D.Jain & Co. for the Applicants in ABA/2113/2022, ABA/2118/2022 and ABA/2218/2022.
Mr. Harsh Parte a/w. Prachi Parte and Mr. Siddharth Jagusthe for the Applicant in ABA/2189/2022.
Mr. Amit Munde, Special PP for the Respondent-Customs.
Mr. S.H.Yadav, APP for the State.

CORAM : ANUJA PRABHUDESSAI,J.
DATED : 29th November, 2023.

P.C.

1. The aforesaid applicants have filed these applications under Section 438 of Cr.P.C. apprehending their arrest in connection with certain alleged offences under Section 135 of the Customs Act.

2. The respondent, on the basis of general intelligence and data analysis, suspected fraudulent export of cut and polished diamonds in names of unrelated persons with these exports on the basis of 21 fake and fabricated IECs (Import Export Code). It is alleged that IECs were created in the names of real estate agents, drivers, teachers etc, without their knowledge and with an intention of creating bogus entities. The respondent detained one shipping bill dated 27.12.2021

of cut and polished diamonds valued at Rs.76 lakhs exported by Shriram Exports, owned by the Applicant Maulik Mehta. The office premises of Shriram Export were searched and certain documents of the applicant Prerak were recovered. The statements of the IEC holders, recorded under Section 108 of the Customs Act indicated that the applicant handled all the exports. Accordingly, summons was served on the applicants under Section 108 of the Customs Act. Apprehending their arrest in the said matters, the applicants have filed these applications for pre-arrest bail.

3. Heard learned Counsel for the applicants and the respondent. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties.

4. Before adverting to the facts, it would be relevant to refer to Section 104 of the Customs Act, which reads thus:

> 104. **Power to arrest.**
>
> (1) If an officer of customs empowered in this behalf by general or special order of the Principal Commissioner of Customs or Commissioner of Customs has reason to believe that any person

has committed an offence punishable under Section 132 of section 133 or section 135 or section 135A or section 136, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every person arrested under sub-section(1) shall, without unnecessary delay, be taken to a Magistrate.

(3) Where an officer of customs has arrested any person under sub-section (1), he shall, for the purpose of releasing such person on bail or otherwise, have the same powers and be subject to the same provisions as the officer-in-charge of a police station has and is subject to under the Code of Criminal Procedure, 1898.

(4) Not withstanding anything contained in the Code of Criminal procedure, 1973 (2 of 1974), any offence relating to:-

(a) prohibited goods; or

(b) evasion or attempted evasion of duty exceeding fifty lakh [rupees or]

(c) fraudulently availing of or attempting to avail drawback or any exemption from duty provided under this Act, where the amount of drawback or exemption from duty exceeds fifty lakh rupees; or

(d) fraudulently obtaining an instrument for the purposes of this Act or the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992), and such instrument is utilized under this Act, where duty relatable to such utilization of instrument exceeds fifty lakh rupees, shall be cognizable.

(5) Save as otherwise provided in sub-section (4), all other offences under the Act shall be non-cognizable.

(6) Notwithstanding anything contained in the Code of Criminal procedure, 1973 (2 of 1974), an offence punishable under Section 135 relating to-

(a) evasion or attempted evasion of duty exceeding fifty lakh ruppes, or

(b) prohibited goods notified under section 11 which are also notified under sub clause (c) of clause (I) of sub-section (1) of section 135; or

(c) import or export of any goods which have not been declared in accordance with the provisions of this Act and the market price of which exceeds one crore rupees; or

(d) fraudulently availing of or attempt to avail of drawback or any exemption from duty exceeds fifty lakhs [ruppes , or]

(e) fraudulently obtaining an instrument for the purposes of the Act or the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992), and such instrument is utilized under this Act, where duty relatable to such utilisation of instrument exceeds fifty lakh rupees shall be non-bailable.

(7) Save as otherwise provided in sub-section (6), all other offences in this Act shall be bailable."

5. Section 104 (4) stipulates that notwithstanding anything contained in the Code of Criminal Procedure, any offence relating to prohibited goods or evasion or attempted evasion of duty exceeding Rs.50 lakhs shall be cognizable. Sub- Section (5) provides that save as otherwise provided in Sub- Section (4) all other offences under the Act shall be non cognizable. Sub-Section (6), which starts with a non-obstante clause provides that the following offences shall be non bailable. Viz offences punishable under Section 135 relating to (a) evasion or attempted evasion of duty exceeding 50 lakhs; or (b) prohibited goods notified under Section 11 which are also notified under Sub-clause C of Clause (i) of Sub-Section (1) of Section 35; or (c) or import or export of any goods which are not been declared in

accordance of the provision of the Act and the marked price exceeds Rs.1 Crores; or (d) fraudulently availing of or attempt to avail of drawback or any exemption from duty provided under the Act, if the amount of drawback or exemption from duty exceeds 50 lakhs rupees.

6. The question which therefore arises is whether the offence of which the applicants are accused of is cognizable and non-bailable. The records reveal that the applicants are in the business of export/sale of diamonds. They have been summoned and have been extensively interrogated, despite which, the respondent is unable to demonstrate that the applicants are involved in committing any offence relating to prohibited goods or that they are involved in evasion of duty or attempted evasion of duty exceeding 50 Lakhs. Moreover, the material on record does not prima facie demonstrate that the alleged offence relates to any one of the four clauses mentioned in Sub-section (6), as specified above. Hence, prima facie, there is merit in contention of the learned Counsel for the applicants that the offence is bailable offence as provided under Sub-section (7) of Section 104 of the Customs Act.

7. Under the circumstances and in view of the discussion supra, this is a fit case to grant pre-arrest bail. Hence the applications are allowed on the following terms and conditions:-

(i) In the event of the arrest of the applicants in the matter of investigation carried in (i) F. No.S/3-Misc.338/21-22 SIIB (APSC); (ii) F.No. S/3-Misc. (01) 182/2020-21-PCCCCV01-III; (iii) F.No.S/3-Misc.01 (312)/21-22 PCCCC; (iv) F.No.S/3-Misc-01(155)/2022-23 PCCC/S/3-Misc/339/2021-22 SIIB, they shall be released on bail on furnishing bail bond of Rs.50,000/- (Rupees Fifty Thousand Only) each with one or two sureties in the like amount;

(ii) The applicants shall report to the respondent no.1 Officer as and when required for the purpose of interrogation.

(iii) The applicants shall co-operate with the investigation and shall not tamper with any evidence or witness in any manner.

(iv) The applicants shall provide their permanent as well as temporary address, if any, and their contact details to the Respondent No.1 Officer, and further keep the Officer intimated about the change in residential address / contact details from time to time.

(v) The applicant/s shall not interfere with the complainant and the other witnesses in any manner.

(ANUJA PRABHUDESSAI, J.)