IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2217 OF 2023

Ravindra Laxman Rao Mane ...Applicant

Versus

The State of Maharashtra & ors. ...Respondents

Mr. Brijesh Pathak, for the Applicant.
Mr. Saket Ketkar, for Respondent No.2/DRI.
Mrs. Geeta Mulekar, APP for the State.

CORAM: N. J. JAMADAR, J.
DATED: 30th AUGUST, 2023

Order:-

1. Heard the learned Counsel for the parties.

2. This is an application for pre-arrest bail in connection with the summons issued to the applicant in the case bearing F.No.DRI/M20/B/INT/37/2022 registered for the offences punishable under Sections 132 and 135 of the Customs Act, 1962. The Director of Revenue Intelligence (DRI), on the basis of a specific intelligence input, conducted search and seized 5.8 kgs. of smuggled gold at Air Cargo Complex, Mumbai, on 6th May, 2022. During the course of investigation, DRI conducted a search at a premise located at 403A, 4th Floor, Golden Plaza Building, Dhanji Street, Kalbadevi, Mumbai. During the search operations thereat smuggled gold in various forms weighing 37.129 kgs. with an approximate value of Rs.21.65 Crores was recovered under Section 111 of the Customs Act. Cash amount of Rs.23,50,256/- was also recovered and seized under Section 121 of the Customs Act.

3. Statements of the members of the alleged syndicate were recorded under Section 108 of the Customs Act. One Prashant Mainkar was arrested on 24th January, 2023. It further transpired that the said accused Prashant Mainkar alias Vikas Bhai used to parcel smuggled gold to Ganesh Jewellers, Ahmedabad through Angadia Services of Patel Vishnubhai Kantilal and Company. A statement of one of the Directors of the said company came to be recorded. It transpired that the melted gold received in the name of Ganesh Jewellers was, in fact, handed over to Ravindra Laxmanrao Mane, the applicant, who is the proprietor of Gopnath Jewellers located at Ratan Pole, Mirchi Pole, Ahmedabad. Receipts of smuggled gold delivered to the applicant were also handed over by the said Director. Further arrests were made. Those co-accused also revealed the complicity of the applicant. Hence, a summons was issued to the applicant under Section 108 of the Customs Act.

4. Apprehending arrest, the applicant preferred ABA/713/2023 before the Court of Sessions. Initially interim protection was granted by order dated 28th March, 2023. By a further order dated 2nd August, 2023, the learned Additional Sessions Judge was persuaded to reject the application for pre-arrest bail.

5. The applicant claims he deals in the business of testing of purity of gold at Ahmedabad. The applicant after testing the purity of the gold hands over the same to the party, who seeks certification of purity. Pursuant to the interim protection granted by the Court of Sessions, the applicant did appear before DRI and co-operated with the investigation and furnished all relevant documents. In the circumstances, since the investigation is complete for all intent and purpose, at this stage, custodial interrogation of the applicant is not warranted.

6. An affidavit-in-reply is filed on behalf of DRI in opposition to the prayer of pre-arrest bail. It is contended, *inter alia,* that a strong case is made out against the applicant which warrants investigation for which custodial interrogation of the applicant is indispensable. The applicant, according to DRI, did not cooperate with the investigation and suppressed material information. Having regard to the quantity of the smuggled gold and the gravity of the offence, arrest of the accused is necessary for complete and effective investigation.

7. I have heard Mr. Pathak, the learned Counsel for the applicant, Mr. Ketkar, the learned Counsel for respondent No.2 and Mrs. Mulekar, the learned APP for the State/respondent No.1. The learned Counsel took the Court through the material on record. Mr. Ketkar also invited the attention of the Court to the statements of the witnesses and the co-accused recorded under Section 108 of the Customs Act.

8. At the outset, Mr. Pathak, the learned Counsel for the applicant, submitted that since the offence under Section 135 of the Customs Act, 1962 entails maximum punishment of seven years, it is incumbent upon the prosecution to make out a case for custodial interrogation. Placing strong reliance on the decisions of the Supreme Court in the cases of ***Arnesh Kumar vs. State of Bihar***[1] and ***Satender Kumar Antil vs.***

1 (2014) 4 SCC 273.

Central Bureau of Investigation and another[2], Mr. Pathak submitted that the applicant deserves the exercise of the discretion on the count of the punishment the offence under Section 135 entails. As a second limb of this submission, Mr. Pathak would urge that the prosecution, in the light of the punishment which the major offence under Section 135 of the Customs Act entails, cannot be heard to urge that the offence is of grave nature.

9. Mr. Pathak further submitted that there is an inbuilt guarantee of personal liberty under Section 104 of the Customs Act. The authorized officer of the Customs is empowered to arrest any person only when he has reason to believe that such person has committed an offence under Sections 132, 133, 135, 135A or 136 of the Customs Act. Laying emphasis on the use of the expression "reason to believe" Mr. Pathak submitted that in the case at hand there is no material to demonstrate that the said test is satisfied. It is not the mere *ipse dexit* of the concerned officer. There has to be credible material which would justify such belief, submitted Mr. Pathak.

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2 (2022) 10 SCC 51.

10. A very strong reliance was placed by Mr. Pathak on an order passed by this Court in the case of ***Narendra Amrutlal Patel and anr. vs. Assistant Commissioner of State Tax and anr.*** in ***Anticipatory Bail Application No.2099 of 2022,*** wherein in the context of the provisions of Section 132 of the Central Goods and Services Tax Act, 2017, it was enunciated that the expression "reason to believe", contemplates existence of reasons on which the belief is founded and not merely to believe in the existence of the reasons inducing the belief. The belief must not be based on mere suspicion, but must be founded upon some concrete foundation, on the basis of direct or circumstantial evidence and it will be open for the Court to examine whether the reason for the formation of the belief have a rational connection with, or the relevant bearing on the formation of belief. Reasons to believe, thus, must be based on some credible material.

11. Mr. Pathak submitted that if the aforesaid test is applied to the facts of the case, DRI has singularly failed to demonstrate the existence of "reason to believe". It was submitted that DRI has not proceeded against the persons, who were allegedly involved in the transfer of the smuggled gold. As the applicant has brought material on record to show that he deals in the business of testing of purity of gold, a *prima facie* case for the exercise of the discretion can be said to have been made out, submitted Mr. Pathak.

12. In opposition to this, Mr. Ketkar, the learned Counsel for the DRI, submitted that the complicity of the applicant is made out with an element of certainty by the statements of the persons recorded under Section 108 of the Customs Act. Mr. Ketkar would urge that the delivery of huge quantity of gold to the applicant is rather incontrovertible. There is material to show that though the smuggled gold was meant for Ganesh Jewellers, yet, it was, in fact, delivered at the applicant's firm. The mobile number of the applicant finds mention on the receipts under which the smuggled gold was allegedly transferred. To add to this, according to Mr. Ketkar, there is material to show that the applicant had abused the liberty by making an effort to dissuade the persons from disclosing his identity and involvement in the smuggling. In such circumstances, an order of pre-arrest bail would cause serious prejudice to the public interest. According to Mr. Ketkar, the huge quantity of the smuggled gold allegedly delivered to the applicant and the resultant gravity of the offence, which has the propensity to cause huge loss to public revenue, cannot be lost sight. To bolster up this submission Mr. Ketkar placed reliance on the judgments of the Supreme Court in the cases of ***Union of India vs. Padam Narain Aggarwal Etc.***[3]***, State vs. Anil Sharma***[4] *and* ***Y. S. Jagan Mohan Reddy vs. Central Bureau of Investigation***[5]***.***

13. I have carefully considered the aforesaid submissions.

14. First and foremost, it is imperative to note that *prima facie,* there is material to show that huge quantity of gold weighing 36 kgs. was delivered to the applicant. Mr. Pathak would urge that the applicant does not contest the factum of the delivery of the gold. The applicant, according to Mr. Pathak, had accepted the delivery of the gold for the purpose of testing its purity and returned the same to the party at whose instance the purity was so tested. Thus, the controversy, even at this nascent stage, lies in a narrow compass.

15. At this stage, the material in the form of the nature of the role attributed to the applicant albeit, *prima facie,* as borne borne out by the statements of the persons recorded under Section 108 of the Customs Act assumes significance.

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3 (2008) 13 SCC 305.
4 (1997) 7 SCC 187.
5 (2013) 7 SCC 439.

Firstly, Mr. Sankalchand Patel, one of the Directors of Patel Vishnubhai Kantilal and Company, the Angadiya Services Provider, throws light on the circumstances of the case. Mr. Sankalchand has categorically stated that the parcels received from Mumbai containing the melted gold, marked for Ganesh Jewellers, were delivered at Gopnath Jewellers on the instructions of one Shrikant of Ganesh Jewellers. The mobile number of the applicant was mentioned on the parcels which were meant for Ganesh Jewellers. Mr. Sankalchand claimed to have known the applicant and in all delivered 12 parcels to the applicant containing the melted gold during the period 7th December, 2022 to 18th January, 2023.

16. Mr. Dharmaraj Bhosale, who came to be arrested, also seems to have stated that 30 to 32 kgs. smuggled gold in melted form was sent to Ganesh Jewellers, Ahmedabad, and after Prashant Mainkar was released on bail, the applicant had been to meet Prashant to enquire as to whose names Prashant had divulged before the DRI. In a further statement Dharmaraj Bhosale specifically named the applicant as the person to whom the smuggled gold was delivered, with the named consignee being Ganesh Jewellers, and the mobile number of the applicant mentioned on the parcel. Dharmaraj

Bhosale professed to identify the applicant as the person, who had came to meet Prashant Mainkar after the latter was released on bail.

17. *Prima facie,* there is material to show that about 36 kgs. smuggled melted gold was delivered to the applicant. There are statements to show that though the consignee was Ganesh Jewellers, the gold was delivered to the applicant and the persons have specifically named the applicant as the person to whom the gold was delivered. In the face of the aforesaid material coupled with rather indisputabe delivery of the gold, I find it rather difficult to accede to the submission that there is no credible material to form a reasonable belief about the alleged complicity of the applicant.

18. I am mindful of the fact that in the case of ***Satender Kumar Antil*** (supra) the Supreme Court has enunciated that in category 'A' containing the offences which entail punishment of seven years or less a better exercise of discretion on the part of the Court in favour of the accused is expected. However, in the face of the material on record where *prima facie* involvement of the applicant in the alleged smuggling of the gold is made out, the custodial interrogation of the applicant appears indispensable for an effective and complete investigation.

19. Mr. Pathak was justified in canvassing a submission that the Court in view of the enunciation in paragraph 90 of the judgment in the case of ***Satender Kumar Antil*** (supra) cannot proceed on the premise that the offences in question being economic offences the accused does not deserve the exercise of the discretion. The Court cannot treat the economic offence as a class apart. However, the quantity of the gold allegedly smuggled cannot be ignored. While appreciating the gravity of the offence, undoubtedly, the punishment the offence entails is the criteria, yet, the quantity of the gold allegedly smuggled and the resultant loss to the public revenue also appear to be germane.

20. The conspectus of aforesaid consideration is that the material on record *prima facie* indicates that custodial interrogation of the applicant is necessary to facilitate further investigation and unmask the characters, which are involved in the alleged syndicate, and unearth the facets of the alleged offence.

21. Resultantly, I am not inclined to exercise the discretion in favour of the applicant.

22. Hence, the following order:

: O R D E R :

(i) The application stands rejected.

(ii) It is clarified that these *prima facie* observations are confined to determine entitlement to pre-arrest bail only.

[N. J. JAMADAR, J.]