

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.1743 OF 2023

Abdul Rahim Ahmad Barambia

.... Applicant

versus

Union of India & Anr.

.... Respondents

.....

- Mr. Subhod Desai a/w Anupam Dighe, Ms. Chandi Tanna i/b. India Law Alliance, Advocate for Applicant.
- Ms. Mahalakshmi Ganapathy, APP for the State/Respondent.
- Mr. Saket R. Ketkar, Advocate for Respondent No.1.
- Mr. Anuj Pundir, Intelligence Officer – DRI.

CORAM : SARANG V. KOTWAL, J.
DATE : 23rd JANUARY, 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with F. No.DRI/MZU/B/INT-64/2023, registered by Directorate of Revenue Intelligence, Mumbai Zonal Unit, under sections 135(1)(a) and 135(1)(b) of the Customs Act.

2. Heard Mr. Subhod Desai, learned counsel for the Applicant, Mr. Saket R. Ketkar, learned counsel for the

Respondent No.1 and Ms. Mahalakshmi Ganapathy, learned APP for the State.

3. The story of the Respondent No.1 is that the Directorate of Revenue Intelligence, MZU, on the basis of specific information intercepted two passengers namely Mohammad Umar Mohammad Haroon Fazalwala and Farhin Salim Vahevaria traveling from Sharjah to Mumbai by Air India Express Flight No.IX-252 dated 03/06/2023. They had crossed the green channel and were proceeding towards exit. When they were stopped, both of them were searched. Both of them were found carrying four 24 KT gold bars each, weighing 1 kg each, totally weighing 4000 gms. Thus, both of them were having four such gold bars each in their waist band. The total gold bars were weighing 8 kgs worth Rs.4,94,00,000/-. Both these persons were husband and wife. Their statements u/s 108 of the Customs Act were recorded. There was a third person namely Mudasar Ayoob Dochki. He was also traveling in the same flight. He was also stopped. The statements of these three accused were recorded

u/s 108 of the Customs Act, 1962. All three of them named the present Applicant. The Respondent No.1 officers started making enquiries with the Applicant's family and therefore the Applicant apprehended his arrest. He filed an application for anticipatory bail before the Court of Sessions, Greater Mumbai. It was rejected and then present application is filed.

4. Learned counsel for the Applicant submitted that the maximum punishment for the alleged offence against the Applicant is 7 years. Therefore, his custody is not strictly necessary. The statements which were recorded u/s 108 of the Customs Act, purportedly given by all the three accused were retracted by them on 07/06/2023 before the Metropolitan Magistrate. He submitted that in any case, those statements were inadmissible and their retraction makes them totally worthless. He submitted that, therefore, the investigating agency did not have any definite material to curtail the liberty of the present Applicant. He invited my attention to the affidavit filed by the investigating agency before the Sessions Court as well as

before this Court. He submitted that in the affidavit filed before the Sessions Court, the Respondents had mentioned that the Applicant was never implicated in the said case. This statement was made by the Respondents in the affidavit when the Applicant's anticipatory bail application was pending before the Court of Sessions. Mr. Desai submitted that even in the affidavit filed in the present application in paragraph No.22, the Respondents have stated that the role of the Applicant in this case is yet to be proved and his statement is very much necessary. The Applicant in his letter dated 12/06/2023 had stated that he was willing to co-operate with the investigating agency. Mr. Desai submitted that during pendency of this application before this Court, he was protected by an ad-interim relief dated 26/06/2023. Thereafter, he attended the Respondent's office on 13/07/2023, 14/07/2023 and 15/07/2023 for recording his statements. On 15/07/2023 he was told by the investigating agency that his presence was not required and he was asked not to appear. Mr. Desai therefore submitted that the Applicant has cooperated with the

investigation and the investigating agency did not want his further appearance for investigation. He further submitted that the Applicant's premises were searched and nothing incriminating was found. He further submitted that other three accused were enlarged on default bail because the investigating agency did not care to file the complaint within a period of 60 days. The investigating agency is only targeting the present Applicant.

5. Learned counsel appearing for the Respondent No.1 on the other hand strongly opposed grant of relief in this application. He submitted that though the Applicant has attended the Respondent No.1's office, he never cooperated and did not tell the correct facts. Therefore, his custodial interrogation is a necessity. He objected to the grant of relief in this application. He submitted that at this stage the investigating agency can rely only on the information provided by the co-accused, who are intercepted and from whom the gold was recovered. At this stage, this can be the only source of

information on which the investigation can proceed. Therefore, their statements which are recorded u/ 108 of the Customs Act are important. All the three arrested accused have given specific role to the present Applicant emphasizing that he was the mastermind behind the entire operation. In this view of the matter, his custodial interrogation is absolutely necessary. He further submitted that though the Applicant has attended the investigating agency's office, he has not cooperated with the investigation at all. He has given evasive replies and therefore, the investigation is severely hampered. The offence is very serious.

6. I have considered these submissions and I have perused the statements of arrested accused recorded u/s 108 of the Customs Act. The accused Farhin is niece of the present Applicant. She has stated that she and her husband i.e. the co-accused Mohd. Umar were sent to Dubai on 01/06/2023 on flight No.IX-252 by the present Applicant. She was having prior knowledge that the Applicant was involved in the activities of

smuggling gold from Dubai. He used to send persons from India to Dubai for carrying out such activities for remuneration. The Applicant had handed over foreign currency to these accused. One unknown person collected that currency from those accused on 01/06/2023 from their hotel room. The gold bars were handed over to this accused by another person in the midnight of 02/06/2023. They left Dubai for Sharjah on 03/06/2023 and then caught the flight for Mumbai from there. She has clearly stated that 8 bars of gold that they had brought from Dubai were brought on the instructions of the present Applicant and were to be handed over to him as per his other instructions. The flight tickets for journey from Mumbai to Sharjah were booked by the Applicant and he had forwarded the same on WhatsApp. Return tickets were book by the third accused. Thus, the said accused Farhin has clearly spelt out the important main role played by the present Applicant. Her statement is corroborated in material particulars by the statement of her husband Mohd. Umar. Even the statement of third accused Mudasar Ayoob corroborates all these facts. He has also stated that he was

working for the Applicant and his role was to book tickets and arrange Visas for the passengers sent by the Applicant. He booked return tickets of the other two accused on the directions of the present Applicant.

7. Thus there is very strong incriminating material against the present Applicant. The allegations against him are not baseless. There is a definite material with the investigating agency against the Applicant. Considering the gravity of offence and possibility of many such instances in the past, the Applicants' custodial interrogation is necessary. No case for protection u/s 438 of Cr.P.C. is made out. The application is rejected.

(SARANG V. KOTWAL, J.)