IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2281 OF 2023

1. Chirag Nalin Shah, &
2. Hemang Shah .... Applicants

Versus

The State of Maharashtra .... Respondent

Mr. Brijesh Pathak, Advocate a/w. Aniket Nikam, Mahesh Mirpuri, Kartik Vig, Heena Khan for the Applicants.

Mr. Advait M. Sethna, Advocate a/w. Rangan Majumdar, Sangeeta Yadav, for the Respondent – DRI.

Ms. P. P. Bhosale, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 19th APRIL, 2024

P.C. :

1. The prayer in this application is as follows :

> “(a) This Hon’ble Court may kindly be pleased to direct that, in the event of Applicants’ arrest in connection with inquiry conducted by Mr. J.P. Agarwal, Senior Intelligence Officer, Directorate of Revenue Intelligence under Section 193 and 228 of Indian Penal Code, they may kindly be released on pre-arrest bail on such terms and conditions as this Hon’ble Court may deem just fit and proper;”

In effect, the Applicants are seeking relief under Section 438 of Cr.P.C. in connection with the said inquiry.

2. Heard Mr. Brijesh Pathak, learned counsel for the Applicant and Mr. Advait Sethna, learned counsel for the Respondent – DRI.

3. The case against the Applicants is reflected in the affidavit-in-reply filed by the Deputy Director working with Directorate of Revenue Intelligence, Surat. It is admitted by the learned counsel for the Applicants that they are not raising the jurisdictional issue and the Sessions Court in Mumbai and the High Court of Bombay have jurisdiction to entertain the Anticipatory Bail Applications. Learned counsel for the investigating agency, on instructions, also states that after the investigation, the complaint would be filed in the Court of Metropolitan Magistrate, Mumbai by the Airport Customs Commissionerate.

4. The Applicants are the Partners of M/s. Diavon Fine Jewels L.L.P. (hereinafter referred to as the 'Applicants' firm' having their registered office at 701, the Capital, G Block, Bandra Kurla Complex, Bandra (East), Mumbai. The matter pertains to the

import of gold which was permitted under Notification No.18/2015–Customs issued by the Ministry of Finance, Government of India on 1.4.2015 in exercise of the powers conferred under Section 25(1) of the Customs Act,1962. It was felt necessary to exempt certain material imported into India against the valid advance authorization for an exemption of the duty on such goods; provided the conditions were satisfied. The Applicants had obtained permission vide the authorization letter dated 4.11.2022 having import validity upto 4.11.2023 and the export validity upto 4.5.2024. According to the investigating agency, the importer had to process the imported articles and was duty bound to export the finished products within a period of 120 days from the actual receiving of those articles in India. In the present case the Applicants' firm was granted authorization to import the plain gold bar (purity – 0.995) upto 150 kg. The Applicants imported 37 kg of gold from 27.12.2022 upto 25.1.2023. Inspite of that, the gold which was imported was not used for any processing and it was not exported at all. There was no trace of that gold. There was evasion of duty because if the gold was not exported within that period, a duty was leviable on such import with penalty. That was not done and, therefore, their investigation was initiated. A raid was conducted on 12.6.2023 at the office of the Applicants' firm and thereafter various statements were recorded, different searches were taken and ultimately it was found that the gold was actually sold by the Applicants in Indian market. It was not utilized for processing and exporting. There was no trace of the gold imported in India. Hence, they were liable to pay the customs duty. The affidavit-in-reply filed by the Respondents mentions that the registered office of the Applicants was only a dummy office and the office place was shared by several other legal entities. However, it was shown as a factory unit in the license. The search operations showed that M/s. D.B. Gold having address at Dahisar was shown as the supporting manufacturer in the license. It was found that there was no production of jewellery at the premises at Dahisar. They did not have any workers. The proprietor of M/s. D.B. Gold was one Dushyant Soni. He had informed that he had not received any gold from the Applicants' firm. No stock of jewellery was found in the premises of the said supporting manufacturer. It is the case of the Respondents that the Applicants had appeared in investigation, but, had not cooperated. The Applicants had admitted that they had sold the entire imported duty-free gold to Ronak Jems Pvt. Ltd and Choksi Ashok Kumar & Co. in the months of January to March, 2023. The statements of some persons from those entities were recorded. According to them, they had not purchased any imported gold bars but they had purchased some local / standard gold bars from the Applicants' firm. According to the Respondents, the Applicants have evaded the customs duty of more than Rs.3.38 Crores on the imported duty free gold valued at more than Rs.18.35 Crores. Hence they have committed the offence under Section 135(1)(i)(A) and 135(1)(i)(B) of the Customs Act, 1962.

5. Learned counsel for the Applicants made the following submissions :

i. The Applicants have not committed any offence. The inquiry is premature. The concerned authority has given the extension on 1.5.2023 mentioning that the export obligation period has been extended from 4.5.2024 to 4.11.2024.

ii. Learned counsel relied on a copy of that authorization which is annexed at Exhibit-A to this Application. Based on this extension, the learned counsel submitted that the Applicants have time till 4.11.2024 to export the processed gold. Therefore, there was no necessity to take steps against the present Applicants.

iii. The entire action of the investigating agency is premature and illegal.

iv. He submitted that the Applicants have paid the duty to the tune of Rs.50 lakhs and they are further willing to pay Rs.75 Lakhs without prejudice to their rights and contentions.

v. There are provisions under Section 137 of the Customs Act whereby the offence can be compounded. Since the Applicants are showing willingness to pay the major part of the duty quantified by the investigating agency, the Applicants' custodial interrogation and their arrest is not necessary and that they are willing to pay the balance amount of the duty in a time bound manner.

6. Learned counsel appearing for the investigating agency relied on certain provisions of the Customs Act. He submitted that the offence under Section 135(1)(a) and 135(1)(b) are made out in

the present case. The gold which is imported, on which the duty is not paid which is more than Rs.50 Lakhs, can be confiscated. Learned counsel relied on Section 111(o) of the Customs Act. The Sections 135(1)(i)(A) and 135(1)(i)(B) and Section 111(o) of the Customs Act reads thus :

> "**135. Evasion of duty or prohibitions.** (1) Without prejudice to any action that may be taken under this Act, if any person--
>
> (a) is in relation to any goods in any way knowingly concerned in mis-declaration of value or in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any prohibition for the time being imposed under this Act or any other law for the time being in force with respect to such goods; or
>
> (b) acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111 or Section 113, as the case may be; or
>
> xxxxx
>
> xxxxx
>
> xxxxx
>
> he shall be punishable,--
>
> (i) in the case of an offence relating to,--
>
> (A) any goods the market price of which exceeds one crore of rupees; or

(B) the evasion or attempted evasion of duty exceeding fifty lakh of rupees; or

xxxxx

xxxxx

xxxxx

with imprisonment for a term which may extend to seven years and with fine:

PROVIDED that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for less than one year;

xxxxx

xxxxx"

"**111. Confiscation of improperly imported goods, etc. --** The following goods brought from a place outside India shall be liable to confiscation:--

(a) xxxx

(b) xxxx

xxxx

xxxx

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;"

7. Learned counsel for the investigating agency submitted that the offences against the Applicants are cognizable and non-bailable as per Section 104(6) of the Customs Act as the evasion of duty exceeds Rs.50 Lakhs. He submitted that the aforementioned notification No.18/2015-Customs referred to hereinabove lays down that the authorization shall not be transferred and the same material shall not be transferred or sold. He submitted that the public notice is given on 10.5.2018 by the Ministry of Commerce and Industry in exercise of powers conferred under paragraph No.4.03 of the Foreign Trade Policy 2015-2020 making special reference to the precious metal, gold/ silver/ platinum/ jewellery wherein the export obligation period with the import conditions from the date of clearance of each consignment against authorization was to be fulfilled within 120 days.

8. Learned counsel submitted that this is clear provision whereby outer limit of 120 days for exporting the processed articles from the date of import of the consignment is laid down. The period cannot be extended. He, therefore, submitted that the reliance of the learned counsel for the Applicants on the extension

at Annexure-A is completely misplaced. All that particular authorization mentions is that the export obligation period was extended from 4.5.2024 to 4.11.2024; but, that has to be read with import permission which was given to them on 4.11.2022. In that case, the import validity was 4.11.2023 and the export period was upto 4.5.2024.

9. Learned counsel for the investigating agency submitted that though this authorization extended the export obligation period is from 4.5.2024 to 4.11.2024, it cannot relate to the last date of the import of the consignment. It does not wipe out the requirement of exporting the processed gold within 120 days from the date when they were received in India. In the present case, the Applicants' stand is not that they had imported any gold which they could export within the period from 4.5.2024 to 4.11.2024,

10. According to the learned counsel for the investigating agency the Applicants have created fake documents showing that the gold was sent to D.B. Gold, a supporting manufacturer. This would amount to the offences punishable under Sections 463, 464, 465 and 468 of the Indian Penal Code.

11. Learned counsel also produced the statements recorded during investigation under Section 108 of the Customs Act.

12. I have considered these submissions. As per the provisions, discussed hereinabove, one thing is clear that the importer had to process the articles imported under that scheme and had to export the processed articles within 120 days of actual receiving that consignment in India. The period of 120 days is the maximum period, as referred to hereinabove. The authorization extending the export obligation period, which is relied on by learned counsel for the Applicants mentions that the period under export obligation period was extended from 4.5.2024 to 4.11.2024 but that would again relate back to the imports made 120 days before any day falling between this period. It is not the case of the Applicants that they had imported any gold after 25.1.2023. Therefore, this extended period for export would not be of much relevance in the present facts of the case.

13. As rightly submitted by learned counsel for the investigating agency, the Applicants had 120 days to export the processed gold from the date of last consignment i.e. 25.1.2023.

This was not done in the present case and, therefore, the Applicants were liable to pay the duty. Thus, at this stage, there is sufficient force in the submission of learned counsel for the investigating agency that there is evasion of duty of the amount, mentioned hereinabove.

14. As far as the merits of the matter is concerned, there are statements recorded of a few witnesses and the statements recorded of the Applicants themselves. One Dushyant Ashok Soni was concerned with D.B. Gold He has stated that the Applicants had never given him any gold for processing work. On the day of search i.e. on 12.6.2023 the Applicant Hemang had telephonically instructed him not to go to the office premises of D.B. Gold. This witness denies of having received any part of the gold i.e. any part of 37 kgs of gold which was imported by the Applicants. The Applicants wanted him to sign the vouchers without any supply of the gold.

15. The Applicants in their statements could not give satisfactory answers about the gold and they could not produce that gold.

16. Another witness Sagar Jain was concerned with Ronak Jems Private Limited. He has stated that he had not purchased any imported gold bar from the Applicants' firm but he had purchased local/standard gold bars from them during the period of December, 2022 to March, 2023.

17. The sum and substance of this discussion is that 37 Kgs of gold which was imported by the Applicants under that Scheme has disappeared ; either it is sold in the local market or it was misappropriated by the Applicants. It is quite obvious that the gold after processing was not exported. Therefore, the Applicants are liable to pay the duty. The matter does not rest there, but the gold itself was liable to be confiscated under Section 111(o) of the Customs Act. Since the gold is not found, the further steps for confiscation cannot be taken and for this very purpose the Applicants' custodial interrogation is necessary. The Applicants have taken wrong advantage of the scheme of the Government; they have imported 37 Kgs of gold under that Scheme but have not fulfilled the conditions. The gold is misappropriated. The offence is quite serious. The Applicants' custodial interrogation is

necessary. No case for grant of protection under Section 438 of Cr.P.C. is made out. The Application is rejected.

18. At this stage, learned counsel for the Applicants prays for extension of interim relief which was granted to the Applicants. Learned counsel for the investigating agency strongly objected to grant this prayer. He submitted that considering the gravity of the offence, no extension of interim protection be granted. I have considered these submissions. The interim order was granted only because the Applicants were on interim protection before the Sessions Court during pendency of their anticipatory bail application. The ad-interim order was not a reasoned order. Today, I have heard the parties and I have considered the merits of the matter. The offence involves misappropriation of 37 Kgs of gold and evasion of duty of high amount. Considering the gravity of the offence, I am not inclined to grant any further relief in this situation. Therefore, the prayer for extension of interim order is also rejected.

(SARANG V. KOTWAL, J.)

Deshmane (PS)