IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.3602 OF 2023

Tushar Vilas Pokharkar ... Applicant
versus
The Union of India and Anr. ... Respondents

Mr. Pratik Karande i/by Mr. Aditya Talpade, for Applicant.
Ms. Nitee Punde with Mr. Ram Ochani, for Respondent No.1.
Mrs. Ranjana D. Humane, APP for State.

CORAM: N.J.JAMADAR, J.

DATE : 22 MARCH 2024

P.C.

1. Heard the learned Counsel for the parties.

2. This is an application for pre-arrest bail in connection with File No.DRI/MZU/NS-I/INT—127/ENQ93/2022 for an offence punishable under Section 135 of the Customs Act, 1962.

3. An intelligence was received by DRI that the goods which were allowed for warehousing in Akshay Logistics (NSAIU131), a Warehouse notified under Section 57 of the Act, 1962 as a public warehouse, were being clandestinely removed from the said warehouse and were being illegally diverted to the market to evade payment of customs duty and to circumvent the restrictions imposed under the Customs Act, 1962 or by any other law for the time being in force, by the members of a syndicate.

4. Thereupon, the inspection/examination proceedings were carried out at Akshay Logistics. It transpired that the goods which were allowed for warehousing at

Akshay Logistics had been clandestinely removed from the said warehouse in violation of the conditions imposed while providing licence for a public bonded warehouse. Investigation revealed that the goods i.e. Areca Nuts / Betel Nuts imported in the name of the importers namely M/s.Altamile Overseas, M/s. Fonicy Multitrade Pvt. Ltd., M/s. Alpha Industries and M/s. Maya Enterprises were allowed for warehousing at Akshay Logistics (NSAIU131). However, during the course of inspection, the aforesaid goods were not found stored in the warehouse. Instead a brown coloured dust powder and crushed granules, stuffed in jute gunny bags, having negligible value, were found in the said warehouse. DRI alleges, the value of the goods which had been clandestinely removed was around Rs.56,77,03,316/-.

5. DRA alleges, the applicant was the mastermind in hatching the conspiracy to clandestinely remove the goods from Akshay Logistics Warehouse. The statements of Sagar Rohidas Bangar were recorded under Section 108 of the Act, 1962. As the investigation revealed the complicity of Sagar Rohidas Bangar, he was arrested. Likewise, the statements of Akshay Shankar Phadale and Ramnath P. Bodke were recorded under Section 108 of the Act. Subsequently, they were arrested. All the abovenamed co-accused have named the applicant as the principal confederate in the conspiracy to defraud the revenue.

6. Apprehending arrest, the applicant approached the Court of Session at Panvel-Raigad. Initially, interim protection was granted on 8 September 2023.

Eventually, by an order dated 13 December 2023, the application for pre-arrest bail was rejected by the learned Additional Sessions Judge, Panvel-Raigad. Hence, this application.

7. Mr. Karande, learned Counsel for the applicant, submitted that the applicant is sought to be roped in on the basis of the statements of the co-accused. Those statements recorded under Section 108 of the Act, 1962 have been promptly retracted. Even otherwise, the complicity of the accused for an offence punishable under Section 135 of the Act, 1962 cannot be sustained on the strength of the statements recorded under Section 108 of the Act, only. In the facts of the case, according to Mr. Karande, there is no other material to substantiate the indictment against the applicant. To bolster up a submission that the complicity cannot be sustained on the basis of 108 statement alone, reliance was placed on the decision of this Court in the case of **Union of India V/s. Kisan Ratan Singh and Ors**[1].

8. In any event, post interim protection and pursuant to the directions of the learned Additional Sessions Judge, the applicant has attended office of the Respondent more than 23 times. Therefore, at this stage, the custodial interrogation of the applicant is not at all warranted.

9. To lend support to the submission that a case for exercise of the discretion is made out, Mr. Karande placed reliance on the judgment of the Supreme

1 2020 SCC Online Bom 39

Court in the case of **Siddharam Satlingappa Mhetre v/s. State of Maharashtra and Ors.**[2] Reliance was also placed on the orders passed by this Court in the cases of **Afzal Gaus Mohinuddin Shaikh V/s. Directorate of Revenue & Intelligence, Mumbai and Anr.**[3] and **Jodharam Joetaram Choudhary V/s. Directorate of Revenue Intelligence and Anr.**[4] whereby pre-arrest bail was granted to the accused who were arraigned for an offence punishable under Section 135 of the Act.

10. Per contra, Ms. Punde, learned Counsel for Respondent No.1 – DRI, stoutly resisted the prayer for pre-arrest bail. It was submitted that the investigation has revealed that the applicant is the key conspirator in the conspiracy hatched to clandestinely remove the goods. Inviting attention of the court to the gist of the statements of the co-accused Ramnath Bodke, Sagar R. Bangar and Akshay S. Phalade, Ms. Punde would submit that the applicant emerges as the central figure in the plan to defraud the revenue by clandestinely removing the goods stored in the public bonded warehouse. It has further transpired that the applicant was in touch with the importers. Further trail can only be established by the custodial interrogation of the applicant. Since it is a case of an economic offence and adversely affects the public exchequor, the applicant does not deserve the relief of pre-arrest bail.

11. I have carefully considered the material on record, including the affidavit in reply filed on behalf of the Respondent No.1. Prima facie, the *modus operandi*

2 (2011) 1 SCC 694
3 2017 SCC Online Bom 1395
4 2018 SCC Online Bom 5381

appears to be that the importers would import the goods i.e. Areca Nuts / Betel Nuts, and those goods were allowed to be warehoused at Akshay Logistics, a public warehouse licenced under Section 57 of the Act. Subsequently, those goods were removed from public warehouse and diverted in the market evading the duty which was required to be paid thereon, and instead the goods of insignificant value were shown to be warehoused in Akshay Logistics.

12. Mr. Karande made an endeavour to urge that even though three co-accused have named the applicant as a confederate, nay the principal confederate, yet at this length of time,especially when the applicant had attended the office of DRI more than 20 times, the arrest of the applicant is not warranted.

13. To appreciate this submission, the nature of the role attributed to the applicant deserves to be taken into account, albeit prima facie. Co-accused Mr. Bodke, whose statement came to be recorded under Section 108 of the Act, seems to have stated that the applicant had approached him with the plan of clandestinely removing the goods from the customs bonded warehouse. At the instance of the applicant, he had arranged a customs bonded warehouse. The applicant had contacted Vishal Ghone to arrange a custom broker for clearance of Areca Nuts pertaining to import of Maya Enterprises. The applicant offered to pay Rs.50,000/- per container as clearing charges to Vishal Ghone. Thereupon, Mr. Vishal Ghone arranged the services of Adnan Kapadia, Director of R.K.Shipping Pvt. Ltd., as the custom broker for the said

import.

14. Mr. Sagar Bangar, Manager of Akshay Logistics stated that members of the syndicate made him to join Akshay Logistics, a public bonded warehouse, and for facilitating the removal of the goods from the warehouse, he was promised Rs.30,000/- per container. He signed and issued Space Certificate and delivered the same to Akshay Phalade who used to hand it over to the applicant and the co-accused Ramnath Bodke.

15 Mr. Akshay Phalade, in turn, stated that the idea of clandestine removal of the goods from Akshay Logistics was given by Ramnath Bodke. Ramnath Bodke and Tushar, the applicant, used to visit Akshay Logistics and inquire about the status of the containers having Areca Nuts / Betel Nuts which were to be clandestinely removed. He further stated that the applicant along with Ramnath Bodke were in direct touch with the actual importers.

16. In the light of the aforesaid statements, it emerges prima facie that the idea of clandestine removal of the imported goods from the public warehouse emanated from the applicant. In a well planned conspiracy, it appears, persons were posted at the warehouse by the members of the syndicate to facilitate the clandestine removal of the goods sans payment of customs duty.

17. Prima facie, there is ample material to show the complicity of the applicant. It is true, at this stage the material against the applicant is primarily in the

form of the statements of the co-accused. It is also true that the statements recorded under section 108, cannot be taken as a gospel truth and accepted at par without corroboration. However, the stage of the proceeding cannot be lost site of. At this stage, the Investigating Agency may take lead from the statements of the co-accused. In the case at hand, the statements of the co-accused, recorded under section 108, are clear, categorical, and, prima facie, incriminate the applicant as the person who floated and executed the plan to defraud the revenue.

18. The submission on behalf of the applicant that since in the intervening period, the applicant had appeared before the Respondent No.1 on more that 20 occasions, the applicant deserves the relief of pre-arrest bail cannot be accepted unreservedly. Mere appearance of a party is not sufficient. If a person is resolute in denial of the things which cannot be denied, such person cannot turn around and urge that since he attended the investigating officer, he deserves pre-arrest bail.

19. The judgment of this Court in the case of Union of **India V/s. Kisan Ratan Singh (supra),** was in an appeal against the order of acquittal. The decisions in the cases of **Afzal Gaus Mohinuddin Shaikh (Supra)** and **Jodharam Joetaram Chudhary (Supra),** turned on their peculiar facts.

20. In the case at hand, there is a very strong prima facie case against the applicant. It is a case of economic offence which has the propensity to affect the economic fabric of the society. Proper investigation is, therefore, necessary to unearth

the fraud, unmask the identity of the persons who are privy to the fraud and evasion of customs duty and have the trail of clandestinely removed goods.

21. A useful reference in this context can be made to the observations of the Supreme Court in the case of **P. Chidambaram V/s. Directorate of Enforcement**[5] wherein it was, inter alia, observed that the grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences, would definitely hamper the effective investigation.

22. In the light of the aforesaid enunciation, in the case at hand, having regard to the material pressed into service against the applicant, which prima facie indicates that the applicant is the key conspirator, in my view, the grant of bail to the applicant will prejudicially affect the purpose of effective investigation. I am, therefore, not inclined to exercise the discretion in favour of the applicant.

23. Hence, the following order :

ORDER

(i) The Application stands rejected.

(ii) Interim protection granted earlier by the Additional Sessions Judge and

5 (2019) 9 SCC 24

continued by this Court by an order dated 21 December 2023 stands vacated.

(iii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

(N.J.JAMADAR, J.)