IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 1739 OF 2024

Siddharth Manish Kumar Shah ... Applicant
vs.
The Union of India and another ... Respondents

Dr. Abhinav Chandrachud, i/b. Pratik Karande for applicant.

CORAM : MANISH PITALE, J.
DATE : 03rd JULY, 2024

P.C. :

. Heard learned counsel for the applicant.

2. The applicant apprehends arrest in connection with F. No.INV-40/2024-25/Cell/8SIID(I)JNCH. The applicant was served with summons under Section 108 of the Customs Act, 1962 (the said Act), in connection with the incident in question, where it is alleged that a company had clandestinely imported Arecanut and misdeclared quantity of Bitumen, which would attract customs duty to the extent of about ₹ 11.62 crores. The allegation against the applicant appears to be that he was the person, who facilitated such import. Apprehending arrest, the applicant had approached the Sessions Court. By order dated 14.06.2024, the Sessions Court rejected the application and the applicant is before this Court.

3. The respondent authorities in the present case claim that the company in question sought to clandestinely import Arecanut and misdeclared the quantity of Bitumen, in order to cause loss to the treasury to the extent of ₹ 11.62 crores. It is the case of the applicant that in such cases, when the

allegations are against a company, as per Section 140 of the said Act, all those persons who are responsible for and incharge of the affairs of the company, are deemed to be guilty of offences in question. It is submitted on behalf of the applicant that even according to the respondent authorities, the applicant is not a person covered under Section 140 of the said Act and therefore, no ground is made out for arresting the applicant. In this connection, the learned counsel has referred to Section 104 of the said Act, which pertains to power to arrest in such cases. He has also invited attention of this Court to the reply filed before the Sessions Court, wherein reference is specifically made to the statements of two persons recorded during the course of enquiry, which according to the respondent authorities, indicate the role of the applicant. It is submitted that even if the aforesaid material is to be taken into consideration, it cannot be said that the custody of the applicant is necessary, so long as he is ready to co-operate with the enquiry/investigation and particularly, when the involvement of the applicant can be said to be limited to taking care of the paperwork at the point in time when the consignment was imported.

4. This Court has considered the provisions of the said Act, particularly Sections 104, 132, 135 and 140 thereof.

5. If the contention pertaining to Section 140 of the Customs Act raised on behalf of the applicant is to be accepted, in such cases other than the persons who are covered under Section 140 thereof, no other person would be arraigned as accused person responsible for offences under Sections 132 and 135 of the said Act. All those persons involved in facilitating such imports, which constitute offences under the said Act, can certainly be hauled up under the provisions of the said Act.

6. As regards power under Section 104 of the said Act and reliance placed on judgment of the Supreme Court in the case of *Union of India vs. Padam Narain Aggarwal and others* [**(2008) 13 SCC 305**], suffice it to say that the said judgment discusses the power available to the customs officer under Section 104 of the said Act, which is to be exercised in a reasonable manner and not in a whimsical or fanciful manner. The said judgment cannot come to the aid of the applicant in the facts of the present case, for the reason that the statements of two persons recorded during the course of enquiry and reply of the respondent filed before the Sessions Court, *prima facie* indicates active involvement of the applicant in facilitating import of the consignment in question. One of such statements recorded during the course of enquiry, indicates the urgency shown by the applicant in sending the quotation and facilitating the import. There is also material to indicate that the applicant deleted certain messages, which were exchanged with the person concerned, in the context of facilitating import of the said consignment.

7. In such a situation, this Court is not convinced that sufficient grounds are made out by the applicant for interdicting the customs officer from exercising power under Section 104 of the said Act. This Court is of the opinion that the customs officer would certainly exercise power under Section 104 of the said Act in terms of the law laid down by the Supreme Court in that context. It is relevant to note that in the very same judgment of the Supreme Court in the case of **Union of India vs. Padam Narain Aggarwal and others** (*supra*), the Supreme Court has indicated that orders granting bail may result in invitation for the individuals to carry on committing criminal activities and illegal operations in the context of the said Act.

8. The facts of the present case indicate that the respondent authorities need to be given sufficient opportunity to take appropriate steps to further enquire and investigate into the matter, particularly because the incident in question involves evasion of huge amount of customs duty to the tune of ₹ 11.62 crores.

9. In view of the above, no case is made out for granting anticipatory bail.

10. The application is dismissed.

(MANISH PITALE, J)

PRIYA KAMBLI Digitally signed by PRIYA KAMBLI Date: 2024.07.03 17:33:57 +0530 *Priya Kambli*