

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 2702 OF 2024

Sahil Shekh

..... Applicant

VERSUS

Sr. Intelligence Officer, Central Intelligence
Unit and Anr.

.....Respondents

Mr. Kunal D. Nawle for the Applicant.

None for Respondent No.1.

Ms. Rutuja A. Ambekar, APP for Respondent No.2-State.

CORAM : MANISH PITALE, J.

DATE : OCTOBER 07, 2024

P.C. :

1. Heard learned Counsel for the Applicant.
2. The Applicant has approached this Court apprehending arrest in connection with the offences registered under Sections 132 and 135 of the Customs Act, 1962 by Respondent No.1, which is the contesting Respondent. The allegation appears to be that while 1100 packages were sought to be exported from Nhava-Sheva, on actual physical examination of the same, it came to light that some of the packages were mis-declared as 157 of such packages were found to be consisting of firecrackers instead of the declared goods, (“paper of small, decorative articles”) under the CTH 95059090 in the subject Shipping Bill.
3. It is brought to the notice of this Court that while the offences were registered on 7th November 2023, the co-accused person was arrested after about 10 months on 3rd September 2024. This prompted the Applicant to move an Anticipatory Bail Application before the Sessions Court, which was rejected. Hence the Applicant has approached this Court.

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4. The learned Counsel for the Applicant is pressing for interim relief during the pendency of the present Application. He refers to the Remand Application moved by Respondent No.1 before the concerned Magistrate and after referring to the contents thereof, he has invited attention of this Court to the provisions of the Customs Act 1962, contending that in the present case, it can be demonstrated that offences, if at all, for which the Applicant may be held liable are bailable offences. At the time of the filing of the Application, it appears that a copy of the reasoned order of the Sessions Court was not available. Hence, the learned Counsel for the Applicant has tendered a copy of the reasoned Order dated 26th September 2024 passed by the Sessions Court. The same is taken on record. It is further brought to the notice of this Court that co-accused has been granted regular bail by an order 30th September 2024 by the concerned Magistrate.

5. While notice can be issued to contesting Respondent No.1, this Court is inclined to grant interim relief in favour of the Applicant in the following terms.

- a) The Remand Application filed by Respondent No.1 before the concerned Magistrate, itself records that the allegation pertains to export of “restricted goods” i.e. goods that were mis-declared in the present case. There is no reference to the goods in question being prohibited goods as defined under Section 2(33) of the Customs Act, 1962.
- b) It is relevant to note that in the entire Remand Application filed by Respondent No.1, there is no reference to the value of the restricted goods that were sought to be exported by the Applicant.
- c) A perusal of Section 135 of the Customs Act 1962 shows that punishment of imprisonment, which may extend to seven years is provided when the evasion or attempted evasion of duty crosses specific threshold of Rs.50 lakhs.

d) In the absence of any valuation or extent of evasion being mentioned in the Remand Application, at present, it is difficult to understand as to how it can be claimed that offence under Section 135 of the Customs Act 1962 has been committed or that a non-bailable offence has been committed.

e) The offence under Section 132 of the Customs Act 1962 provides for imprisonment extended upto two years and in that sense it can be a bailable offence.

f) The Applicant has placed before this Court a copy of order dated 30th September 2024 whereby the co-accused has been granted Regular Bail. The same is taken on record. A perusal of the order shows that the Magistrate has taken note of the fact that major part of the investigation is over and that the offenses are Magistrate triable.

g) The Applicant is ready to cooperate with the investigation.

6. In view of the above, issue Notice to Respondent No.1, returnable on 13th November 2024, to be listed high on board. The applicant is additionally permitted to serve the Respondent No.1 by way of private service and to place an affidavit of service on record, before the next date of listing.

7. In the meanwhile there shall be interim order in the following terms:

a) Till the next date, in the event the Applicant is arrested in connection with F.No. SG/Misc-142/2023-24/CIU/JNCH dated 07.11.2023 registered by Sr. Intelligence Officer, Central Intelligence Unit, Jawaharlal Nehru Customs House, Nhava Sheva, he shall be released on bail on furnishing PR Bond of Rs.50,000/- [Rupees Fifty Thousand only] and one or two sureties in the like amount;

b) The Applicant shall appear before Respondent No.1 on 9th October 2024 and thereafter as and when called by the said Authority.

c) The Applicant shall cooperate with the investigation, including producing documents in his possession, as may be demanded by Respondent No.1.

d) The Applicant shall not tamper with the evidence and he shall not influence the witnesses or any other persons concerned with the case.

8. In the event, the Applicant violates any of the aforesaid conditions, the interim order will liable to be recalled.

9. List the Application for further consideration on 13th November, 2024, High on Board.

(MANISH PITALE, J.)

Arun Sankpal