2025:BHC-AS:21213



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

**ANTICIPATORY BAIL APPLICATION NO. 2641/2024**

ARJUN KISHANLAL SAINI ..APPLICANT
VS.
DIRECTORATE OF REVENUE INTELLIGENCE AND ANR. ..RESPONDENTS

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Adv. Anil G. Lalla a/w. Adv. Rithika Yerra, Adv. Yash Pulekar, Adv. Ankita Rathod for the applicant.
Adv. Megha Bajoria a/w. Adv. Rushikesh Munde (Spl. P.P.) for respondents.

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**CORAM : RAJESH S. PATIL, J.**

**RESERVED ON : MAY 2, 2025.**

**PRONOUNCED ON: MAY 6, 2025.**

**ORDER :**

**1.** This application is filed under Section 482 of the Bhartiya Nagarik Suraksha Sanhita, 2023 for seeking pre-arrest bail in connection with the Directorate of Revenue Intelligence File No.DRI/MZU/B/INT-32/2024 registered under the offence punishable under Section 135 of the Customs Act., 1962.

**2.** The present applicant is arraigned as accused no.6, after the statement of the arrested accused named in FIR were recorded. All the accused mentioned in the FIR have been arrested and released on bail. Two of them are granted default bail.

**3.** It is submitted on behalf of the present applicant that the melting of the gold is not an offence in itself. The present applicant is an employee of accused no.1 – Balu Keru Metkari. The evasion of duty payable on gold was done by the foreigners who were accused nos. 3 and 4. The present applicant has no role with the said alleged offence of evasion of gold duty. The applicant's role was that he as an employee who followed the orders of his employer/accused no.1. The present applicant was not in direct contact with the foreigners i.e. accused nos. 3 and 4. The accused no.2 collected monies and foreign currency has been recovered from him.

**3.1** The provisions of the Customs Act are not as stringent as that of the Prevention of Money Laundering Act, Terrorist and Disruptive Activities (Prevention) Act, Narcotic Drugs and Psychotropic Substances Act, 1985 and Maharashtra Control of Organised Crime Act. Therefore, while considering the pre-arrest bail application under the Customs Act, this Court has to be slightly more lenient than the other special laws. Under the Customs Act, the various offences are compoundable including that of Section 135(1)(a), 135(1)(c) and 135(1)(d). Therefore, if the offences are compoundable, in that case, the custody of the applicant would not be necessary.

**3.2** Pursuant to the orders passed by this Court, the applicant has attended the office of the IO on 22/7/2024, 18/12/2024, 19/12/2024, 20/12/2024 and 11/4/2025. The applicant has fully cooperated with the custom's officers, therefore, the custody of the present applicant is not necessary. From the present applicant, there is nothing to be recovered viz. Gold and foreign currency.

**3.3** The leave and license agreement with regard to the raided, third premises, neither the present applicant is a party, nor he is a witness. Only the evidence alleged against the present applicant is the statement recorded of accused no.1, accused no.2, accused no.5 and one Mr. Pratik Logade. All these persons have named the present applicant as a party of the conspiracy. The accused no.2 had filed a retraction statement on 23/7/2024 after his statement was recorded on 22/7/2024. Thirteen months have passed after filing of the FIR and the applicant has attended the custom's office for at least five times. Therefore, the custody of the present applicant is not necessary.

**3.4** The applicant relied upon the following judgments of the

Supreme Court:

> ***(1) Shri Gurbaksh Singh Sibbia and others vs. State of Punjab[1]; (2) Sushila Aggarwal and others vs. State (NCT of Delhi) and another[2];***
>
> ***(3) Om Prakash and another vs. Union of India and another[3];***
>
> ***(4) Radhika Agarwal vs. Union of India and others[4].***

**4.** On behalf of the Revenue Department, it was submitted that any offence which is punishable under Indian Penal Code/Bharatiya Nyaya Sanhita Act, once a complaint/FIR is lodged, investigation starts and after the goods involved in the crime are recovered, the investigation is normally completed. Per contra, in the offences committed under the Customs Act, after the goods are seized the investigation starts. The Revenue Department has to find out who are the persons behind the crime committed. The Customs authorities can recover the tax upto two years, and in case of fraud as per Section 28(4), they can do the same till the period of five years. Under the provisions of the Customs Act under Section 110A, there can be a provisional release of the seized goods by the Custom authorities.

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1 (1980) 2 SCC 565
2 (2020) 5 SCC 1
3 (2011) 14 SCC 1
4 2025 SCC OnLine SC 449

**4.1** The learned counsel for the Revenue Department relied upon the judgment of the Single Judge of this Court passed in ***Ashok Kumar versus Commissioner of CGST & C.EX., Navi Mumbai***[5]***.*** The said order passed by the Single Judge of this Court in ***Ashok Kumar*** (supra) was confirmed by the Supreme Court by its order dated 9/9/2020.

**4.2** The Division Bench of the Telangana High Court in ***P. V. Ramana Reddy versus Union of India***[6]. The said order passed by the Telangana High Court is also confirmed by the Supreme Court in ***P. V. Ramana Reddy versus Union of India & Ors.***[7]***.***

**4.3** ***Union of India versus Sapna Jain & ors.***[8]***,***

**4.4** Order passed by the Division Bench of Bombay High Court in ***Ashish Jain versus Union of India & ors.***[9].

**4.5** ***Amit Shukla versus Union of India***[10], Division Bench of Bombay High Court.

**4.6** The latest judgment of ***Radhika Agarwal versus Union of India and others***[11].

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5 2020 (41) G.S.T.L. 311 (Bom.)
6 2019 (25) G.S.T.L. 185 (Telangana)
7 SLP (Crl.) No.4430/2019.
8 SLP (Crl) No.4322-4324/2019.
9 W.P. (Crl) No. 3804/2019.
10 W.P.(St) No. 9355/2021.
11 WP(Criminal)No.336/2018.

**5.** On behalf of the Revenue Authority, factually it was submitted that the present applicant is known in the market by five different names viz. (a) Arjun Saini, (b) Keshav, (c) Ravi, (d) Arjun Mali (e) “56”. These five names are used by the applicant to hide his identity. He admittedly hails from Rajasthan and he is not a local resident. Admittedly, he is in the business of trading in goods as stated in the pre-arrest bail application.

**5.1** In the police verification documents, pertaining to the raided third premises, the name of the present applicant is mentioned as Arjun Mali, being a person who has introduced the parties. The licensor of the third premises, so also, licensee of the third premises have in their statements recorded by the department, mentioned that the present applicant was in control of the third premises. So also, the statement of the co-accused no.2 and accused no.5 mentioned that the present applicant is the kingpin of the crime. The statement of Pratik Logade mentions that he works for the present applicant.

**5.2** The department has recovered apart from gold and foreign currency, electronic gadgets from the raid they conducted on the third premises. In those goods, there is one laptop. In the said laptop, the investigating authorities found accounting entries and some bills which proved that a big amount is involved in the crime. When the present applicant had attended the office of the IO. He has denied his knowledge about the said entries and bills. As regards the gold which was seized, no legal bills have been found of the same. The present applicant while attending the office of the IO has not explained from where the gold had come to India and where it was supposed to go. Mr. Pratik Logade who worked for the present applicant also mentioned in the statement that the present applicant is also involved in “Hawala money”. While this pre-arrest bail application was filed from September 2024 till December 2024, there was no protection to the present applicant. It is submitted that for investigation purpose the custody of the present applicant is required as the applicant was not cooperated.

**6.** The learned counsel Mr. Lalla in his rejoinder submitted that after the applicant was called by the investigating agency nothing additional was found by the investigating agency. There are no further leads other than recording of statements. The DRI thought, that there is no need to call the present applicant for recording any further statement. Therefore, he was not summoned. Mr. Lalla referred to the ratio laid down by the Supreme Court in the judgment of Radhika vs. Union of India.

**7.** I have heard the learned counsel for the parties of both sides. With their assistance, I have also gone through the documents on record.

**7.1** In the FIR, two foreign nationals are arraigned as accused nos.3 and 4, who were arrested and were behind bars for 60 days, hence were granted default bail. In the present crime, gold worth approximately Rs.6.5 crores is involved. So also, there is unaccounted foreign currency involved. The name of the present applicant has been mentioned as a kingpin of the entire crime. His name has been mentioned by accused nos.1, 2 and 5. The IO raided three different premises and while the raid was conducted, they were able to seize the gold and foreign currency worth approximately Rs.6.5 crores. So also, amongst the electronic gadgets which were seized there was a laptop. In the said laptop, the police have found accounting entries and bills through which the IO found that the amount involved in the crime is of a larger magnitude. While the present applicant was called by the IO for recording his statement, he has denied being aware about the entries in the laptop.

**7.2** The witness Mr.Pratik Logade in his statement submitted that he worked for the present applicant. He further mentioned that the present applicant is his Boss. He further submitted that apart from the trading in gold, the present applicant was also involved in “Hawala”.

**7.3** As regards the third premises, in the police verification the name of the present applicant (Arjun Mali) has been shown as a person who has introduced the parties. The licensor and the licensee of the third premises have also mentioned that the third premises is under the control of the present applicant. The present applicant is known by five different names in the market.

**7.4** It has to be found out that the gold and the foreign currency involved in the present crime has come from whose custody and was supposed to go to whom. The persons who have been arrested by the police are naming the present applicant as the main person behind the crime. It has also to be found out before the present crime was committed, how many more such crimes have been committed by the present applicant, involving smuggling of gold, un-accounted foreign currency and also whether he is also involved in “Hawala”. It seems that the present crime is committed in a well organized and in a very systematically planned manner. The applicant on his own saying has admitted that he is trading in gold, therefore, it is presumed that he is aware about all prohibition on the import and export of gold. Granting any kind of protection to the applicant will give him a chance, to repeat a similar kind of crime. This is not a crime where the offence is against any party, but in this crime, the offence is committed against the State, which hampers the State's substantial revenue. Hence, I am of the view that for the purpose of investigation and interrogation of the applicant would be necessary.

**8.** In the recent judgment of the Supreme Court in ***Radhika Agarwal*** (supra), while agreeing with the Bench, Justice Bela M. Trivedi, expressed her views in paragraph 12 in which it is held as under:-

> 12. It is pertinent to note that the Special Acts are enacted to achieve specific purposes and objectives. The power of judicial review in cases of arrest under such Special Acts should be exercised very cautiously and in rare circumstances to balance individual liberty with the interest of justice and of the society at large. Any liberal approach in construing the stringent provisions of the Special Acts may frustrate the very purpose and objective of the Acts. It hardly needs to be stated that the offences under the PMLA or the Customs Act or FERA are the offences of very serious nature affecting the financial systems and in turn the sovereignty and integrity of the nation. The provisions contained in the said Acts therefore must be construed in the manner which would enhance the objectives of the Acts, and not frustrate the same. Frequent or casual interference of the courts in the functioning of the authorized officers who have been specially conferred with the powers to combat the serious crimes, may embolden the unscrupulous elements to commit such crimes and may not do justice to the victims, who in such cases would be the society at large and the nation itself. With the advancement in Technology, the very nature of crimes has become more and more intricate and complicated. Hence, minor procedural lapse on the part of authorized officers may not be seen with magnifying glass by the courts in exercise of the powers of judicial review, which may ultimately end up granting undue advantage or benefit to the person accused of very serious offences under the special Acts. Such offences are against the society and against the nation at large, and cannot be compared with the ordinary offences committed

> against an individual, nor the accused in such cases be compared with the accused of ordinary crimes.
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> (Emphasis supplied)

**8.1** In ***Ashok Kumar*** (supra), Single Judge of this court while dealing in a anticipatory bail application, on an issue of input credit, where fake invoices were issued, rejected the anticipatory bail application. Paragraph nos. 18 and 19 of the order reads as under:-

> 18. Thus, taking into consideration, the facts of the case, though the officers under the CGST Act, do not seek custody of the arrested persons for completing the investigation, respondent's contention that applicant's detention in custody is necessary to prevent him from causing the evidence of the offence to disappear or tampering such evidence is well founded. Counsel for the respondent has correctly placed reliance on Section 41 of the Criminal Procedure Code in support of his argument and also relied on the Clause-(VI) of notings dated 20th January, 2020 which suggest involvement of such two other persons.
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> 19. In view of the facts of the case and in the larger interest of the public and the State, in serious cases like this, I am not inclined to exercise discretion under Section 439 of the Criminal Procedure Code in favour of applicant No. 1. It is rejected.

The Supreme Court dismissed the SLP filed by Ashok Kumar against the order by this Court.

**8.2** The Division Bench of Telangana High Court in ***P. V. Ramana Reddy*** (supra), while deciding a Writ Petition filed, challegning the summons issued by the G.S.T. Commissionerate under Section 70 of CGST Act. Paragraph nos. 55 and 56 read as under:-

> 55. Another argument advanced by the learned Senior Counsel for the petitioners is that since the Proper Officer under the CGST Act, 2017, even according to the respondents is not a Police Officer, he cannot and he does not seek custody of the arrested person, for completing the investigation/enquiry. Section 69(2) obliges the Officer authorized to arrest the person, to produce

> the arrested person before a Magistrate within 24 hours. Immediately, upon production, the Magistrate may either remand him to Judicial custody or admit the arrested person to bail, in accordance with the procedure prescribed under the Code of Criminal Procedure. There is no question of police custody or custody to the Proper Officer in cases of this nature. Therefore, it is contended by Mr. Raghunandan Rao, learned Senior Counsel for the petitioners that the arrest under Section 69, does not advance the cause of investigation/enquiry, but only provides a satisfaction to the respondents that they have punished the arrested person even before trial. According to the learned Senior Counsel, the arrest of a person which will not facilitate further investigation, has to be discouraged, since the same has the potential to punish a person before trial.
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> 56. But, the aforesaid contention proceeds on the premise as though the only object of arresting a person pending investigation is just to facilitate further investigation. However, it is not so. The objects of pre-trial arrest and detention to custody pending trial, are manifold as Indicated in Section 41 of the Code. They are:
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> > (a) to prevent such person from committing any further offence;
> >
> > (b) proper investigation of the offence;
> >
> > (c) to prevent such person from causing the evidence of the offence todisappear or tampering with such evidence in any manner,
> >
> > (d) to prevent such person from making any Inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer,
> >
> > Therefore, it is not correct to say that the object of arrest is only to proceed with further investigation with the arrested person.

The Supreme Court, by its order dated 27/5/2019, dismissed the SLP filed, challenging the order passed by the Division Bench of Telangana High Court. Two days later on 29/5/2019, the Supreme Court by its order, passed in ***Sapna Jain*** (supra), referred to three Judges.

**8.3** In ***Ashish Jain*** (supra), the Division Bench of this Court referred to extent in, writ petition, challenging the issuance of summons under CGST, in view of the Supreme Court order passed in

***Sapna Jain*** (supra).

**8.4** The Division Bench of this Court in ***Amit Shukla*** (supra), while dealing with writ petition challenging power of arrest under Section 69 of the CGST Act, rejected the writ petition considering various judgments passed by the Supreme Court. Paragraph 16 reads as under:-

> 16. Having noted the aforesaid and the scale of the alleged scam as well as the involvement of Petitioner, we are not inclined to interfere with the investigation at this stage, as that may tantamount to foreclosing the out-come to the investigation and would rather hamper the same.

**8.5** Similarly, the Single Bench of this Court in ***Poonabhai Chandpara versus The State of Maharashtra***[12] referred to the anticipatory bail application of under Section 108 of the Customs Act.

**8.6** A Single Judge of this Court in Anticipatory Bail Application No. 1743/2023 while dealing with the pre-arrest bail application under the Customs Act considering the gravity of the offence and possibility of the many such instances in the past and the fact that the co-accused had clearly spelt out the important main role played by the applicant had rejected the pre-arrest bail.

**9.** The authorities relied upon by the applicants, give general guidelines, as regards to pre-arrest bail matters, further clarifying

12 ABA 515/2022 decided on 5/7/2022.

that to grant or not grant anticipatory bail, is a matter of discretion of Court, depending upon facts of each case and gravity of the offences.

**10.** Considering the law as laid down by the Supreme Court in the abovementioned authorities and considering the fact that not one but at least four persons have mentioned that the present applicant is a kingpin of the crime. Further the present applicant has not cooperated with the police as he has not disclosed the purpose, the source and to whom the gold was to be delivered. As regards the foreign currency, there is no explanation. So also, the statement of the worker of the present applicant mentions that apart from the gold trading, the present applicant is also involved in "Hawala". Hence, the present application deserves to be dismissed.

**11.** In view of the above**, the anticipatory bail application stands rejected**.

**12.** It is clarified that the observations made in this order are limited to the question of deciding the anticipatory bail application, the trial Court shall proceed further, without being influenced by the observations made in this order.

**(RAJESH S. PATIL, J.)**

**13.** At this stage, Mr. Lalla, the learned counsel appearing for the applicant states that the interim protection granted be continued for a period of four weeks.

**14.** Ms. Megha Bajoria, the learned Special P.P. for respondents opposes the request made by Mr. Lalla.

**15.** Hence, request is rejected.

**(RAJESH S. PATIL, J.)**