Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1718 OF 2025

1. Manitt Gautam Shah
2. Gautam Chandrakumar Shah .. Petitioners

Versus

Union of India and Anr. .. Respondents

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- Mr. Abad Ponda, Senor Advocate a/w. Mr. Sanjay Udeshi, Mr. Mahesh Londhe; Mr. Saurabh Deorukhkar and Mr. Ajinkya Kadam, Advocates i/by M/s. Sanjay Udeshi @ Co. for Petitioners.
- Mr. Saket Ketkar, Special PP for Respondent No.1 – Union of India.
- Ms. Rajeshree V. Newton, APP for Respondent No.2 – State.

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CORAM : MILIND N. JADHAV, J.

DATE : MAY 09, 2025.

P.C.:

1. Heard Mr. Ponda, learned Senior Advocate for Petitioners; Mr. Ketkar, learned Special PP for Respondent No.1 – Union of India and Ms. Newton, learned APP for Respondent No.2 – State of Maharashtra.

2. Present Writ Petition is filed by Petitioners under the provisions of Section 528 read with Sections 480(3) and 483(1)(b) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short '**BNSS**') read with Article 227 and 21 of the Constitution of India. Petition seeks modification / deletion of a condition in the bail order.

3. Briefly stated, Petitioners are Directors of G.C. Chemie Pharmie Limited (for short '**the said Company**') which is engaged in the business of export, import and manufacturing of pharmaceutical and food supplements etc. In the regular course of business, the said Company imports various products including of Lipofer, Pylopass and Whey Protein Concentrate (for short '**said Goods**') from their overseas suppliers.

4. Petitioner Nos.1 and 2 are arraigned as Accused Nos.1 and 2 in the case registered with Directorate of Revenue Intelligence (for short '**DRI**'), Mumbai Zonal Unit, Mumbai for alleged offences under Sections 132 and 135 of the Customs Act, 1962. According to prosecution, said Goods namely Lipofer, Pylopass and Whey Protein Concentrate were imported by Petitioners by misclassification / mis-declaration. Case of the prosecution is that such act of misclassification of the imported goods was with intention to evade payment of higher customs duty. Tenure of import is from December 2020 to August 2024 when the said Goods were imported. According to prosecution, Petitioners' Company managed to evade differential customs duty of approximately Rs.43.23 crores.

5. Mr. Ponda, learned Senior Advocate would inform the Court that Petitioners were arrested on 23.09.2024. He would submit that Petitioners' bonafides are *prima facie* evident when immediately after their arrest on the next day even without going into the correctness and legality of the prosecution claim, Petitioners offered to deposit an amount of Rs.30 crores towards deficit in customs duty with Respondent No.1. He would submit that this act of Petitioners demonstrates their bonafides right since inception.

5.1. He would submit that learned Magistrate during hearing of Bail Application recorded the fact that Petitioners are voluntarily willing to deposit Rs.30 crores. In the hearing on 24.09.2024, Respondents for the first time escalated and enhanced the differential / deficit duty amount to Rs.50.60 crores. In that view of the matter, when the matter was argued before the Magistrate on 26.09.2024 Petitioners offered to deposit an additional amount of Rs.15 crores with Respondents and undertaking to that effect dated 26.09.2024 was filed. In that view of the matter, Bail Application of Petitioners came to be allowed by the learned Magistrate upon which Petitioners immediately deposited Rs.30 crores with the Customs Authority as agreed to demonstrate their bonafides.

5.2. He would submit that subsequent to the aforesaid deposit Petitioners' financial situation and business condition worsened beyond imagination and in order to improve their business and deal with the above set back Petitioners had to travel abroad to meet their suppliers etc. He would candidly inform the Court that as agreed by the

Petitioners the additional amount of Rs.15 crores within 90 days from the date of their release from prison became difficult for them to deposit. The 90 day period was to expire on 25.12.2024. Hence, Petitioners filed Misc. Application well in advance on 12.12.2024 and explained the aforesaid position to the learned Trial Court. Learned Trial Court after taking into cognizance Petitioners' financial condition allowed the Application but directed Petitioners to deposit a sum of Rs.2 crores on or before 27.12.2024 and the remaining amount of Rs.13 crores within a period of further 90 days from 27.12.2024. Petitioners complied with the first condition and deposited the amount of Rs.2 crores on or before 27.12.2024. The time for deposit of the balance amount of Rs.13 crores granted by the learned Court expired on 27.03.2025 however, Petitioners' financial condition did not improve and therefore Petitioners once again approached the learned Trial Court by filing an Application. The said Application was rejected by learned Trial Court on 24.03.2025. In that view of the matter, Petitioners have approached this Court.

5.3. He would submit that Petitioners are not in a position to deposit any further amount because of the precarious financial condition of their business and their bankers have blocked the credit limit of Petitioners and their Company and have refused to give bank guarantee required for running of business and purchasing of material. He would submit that bankers of Petitioners are insisting for 100%

security in terms of Fixed Deposit (FD) for granting credit limit and Petitioners are facing threats from multiple parties to terminate their contracts. As a result of the precarious financial condition of Petitioners two vendors namely Lonza and Lubrizol have already terminated their contracts and Petitioners are facing the prospect of litigation.

5.4. He would submit that in the above background, an adverse and extremely defamatory article was published in a local newspaper regarding arrest of Petitioners and raid conducted in their office in view of the aforesaid issue. He would submit that this further dented the prospects of Petitioners to revive their business and get back on track. He would submit that it is impossible for Petitioners to now raise 100% security in the form of FD as collateral for bank guarantees and resultantly funds of the Company are getting blocked creating severe liquidity crunch leading to difficulty in running its business. He has candidly informed the Court that the sale turnover of Petitioner' Companies has fallen from Rs.57.03 crores in August 2024 to Rs.46.46 crores in September 2024 and thereafter to Rs.36.54 crores in October 2024 and to Rs.25.01 crores in January 2025 and it has further declined. He would submit that despite the above Petitioners showed their bonafides by depositing an amount of Rs.32 crores. On the issue of charge, he would submit that case of prosecution against Petitioners is for misdeclaration of classification of goods imported and the same is a matter of adjudication. He would submit that in that view of the matter, Petitioners themselves at the outset voluntarily deposited an amount of Rs.30 crores and a further amount of Rs.2 crores in order to show their bonafides. He would submit that deposit of the amount of Rs.32 crores is a substantial amount of deposit and in the present situation where Petitioners are facing the prospect of financial loss in their business, it is impossible for Petitioners to deposit any further amount and therefore Petitioners have approached this Court.

5.5. He would persuade the Court to pass appropriate directions and modify the bail order dated 26.09.2024 passed by the learned Magistrate to the extent of imposing condition No.2, *inter alia*, directing Petitioners to deposit an amount of Rs.45 crores as condition precedent for grant of bail and grant appropriate relaxation in the said condition by exempting the Petitioners from depositing any further amount as the said condition has become onerous in view of the reasons argued by Petitioners.

6. ***PER CONTRA***, Mr. Ketkar, learned Special PP appearing on behalf of Respondent No.1 – DRI would draw my attention to the Affidavit-in-Reply dated 03.04.2025 filed by Parveen Jindal, Deputy Director, DRI, Mumbai Zonal Unit appended at page No.121 of the Writ Petition and would contend that what is pertinent to note in the facts of the present case is that bail order was passed by learned Trial Court on the voluntary undertaking of Petitioners to deposit Rs.45

crores and therefore the said voluntary undertaking is now attempted to be breached by Petitioners by resiling from their solemn promise given to Court. He would submit that confessional statements of Petitioners have been recorded under Section 108 of the Customs Act and they are admissible in evidence and Petitioners have accepted the misclassification of their goods to evade customs duty. He would submit that act of Petitioners was to get cleared the goods from customs department by misclassifying the goods by depicting incorrect classification number and surreptitiously try to clear the goods by paying less customs duty than what was duly payable on the said goods. He would submit that prosecution is heavily relying upon CDRs and whatsapp messages exchanged between Petitioners which *prima facie* indicate that they discussed strategies to circumvent customs regulations, including deliberate omission of the correct HSN codes from shipping documents and used misleading information in purchase orders and bills of entry. He would submit that act of Petitioners is such that their *mens rea* is palpable and beyond doubt and *prima facie* evident. He would submit that evasion of the customs duty is evasion of public money by Petitioners and therefore they do not deserve any leniency. He would submit that Petitioners at the outset deposited an amount of Rs.30 crores voluntarily which goes to show that Petitioners were guilty of committing the offence. He would submit that in such background, Petitioners are unable to meet their own promise as promised by them to the learned Trial Court. He would persuade the Court that on the one hand Petitioners are pleading financial hardship but on the other hand they are seeking permission from Trial Court to carry out foreign trips and therefore there is no reason for relaxation of financial condition imposed by learned Trial Court with respect to deposit.

6.1. He would submit that Petitioners have breached and not complied with the condition precedent for grant of bail and therefore in order to maintain the integrity of judicial process they do not deserve any leniency as grant of leniency will create a negative impact and set an undesirable precedent, encouraging further non-compliance in future regarding any breach of bail conditions in economic offences.

6.2. In support of his submissions, he would refer to and rely upon the following 5 decisions of the Supreme Court:-

(i) ***Union of India Vs. Padam Narain Aggarwal and Ors.***[1];

(ii) ***Vimal Narayan Kabre and Ors Vs. State of Maharashtra***[2];

(iii) ***State of Maharashtra Vs. Avinash*** [3];

(iv) ***Ramesh Kumar Vs. State of NCT of Delhi*** [4]; and

(v) ***Satish P. Bhatt Vs. The State of Maharashtra and Anr.***[5]

1 (2008) 13 SCC 305
2 2013 SCC OnLine Bom 95 : (2013) 2 Bom CR (Cri) 48
3 (2017) 16 SCC 735
4 (2023) 7 SCC 461
5 2024 ALL MR (Cri) 739 (S.C.)

6.3. On the basis of the aforesaid decisions, he would contend that once undertaking has been given by Petitioners it has to be equated with a guarantee or promise to a Court to act in a certain manner and breach of the undertaking as far as personal action is concerned, it would amount to an action for contempt against Petitioners. He would submit that Supreme Court has repeatedly held that once undertaking is given to Court it is in the nature of a formal promise or pledge entered into by a person as agreed to by the party itself.

6.4. He would therefore persuade the Court to reject the Writ Petition.

7. I have heard Mr. Ponda, learned Senior Advocate for Petitioners; Mr. Ketkar, learned Special PP for Respondent No.1 – Union of India and Ms. Newton, learned APP for Respondent No.2 – State and with their able assistance perused the record of the case. Submissions made by the learned Advocates have received due consideration of the Court.

8. At the outset, it is *prima facie* seen that Petitioners are into business and are law abiding citizens and have shown their bonafides by depositing an amount of Rs.32 crores with the Customs Authority on being indicted of misdeclaration and misclassification of the goods imported by them and thereby paying deficit customs duty. It is borne out from the record that demand of the Customs Department at the outset was for non payment of differential duty calculated to the tune of Rs.43.23 crores. Out of this amount admittedly Rs.32 crores have been deposited by the Petitioners to show their bonafides. The trajectory of the Petitioners' case begins with the order dated 26.09.2024 and thereafter been regularly heard by the learned Trial Court. The last rejection order of the Petitioners is passed by the Trial Court on 24.03.2025 appended at page No.86 as a result of which Petitioners are before this Court.

9. This Court, though a Bail Court has jurisdiction to determine the Criminal Writ Petition under Article 227 of the Constitution of India alongwith Section 528 of the BNSS as the relief in the Petition is for relaxing the condition in the bail order.

10. The order dated 24.03.2025 if seen is a non-speaking order which narrates the facts and arguments but does not give any reasons. Generally it is always expected of a Court to give reasons in order to show application of mind. In the present case, it is seen that under condition No.2 in the bail order dated 26.09.2024 Petitioners were directed to deposit an amount of Rs.45 crores. Case of prosecution against Petitioners is in respect of evasion of differential duty and not complete evasion. It is seen that out of the total demand for differential duty, Petitioners have already shown their bonafides by depositing 74% of the said differential duty at the first instance itself. The precise amount of duty that would be payable by Petitioners would be subject to final calculations and adjudication as to whether the classification stated by Petitioners was correct or whether the classification alleged by prosecution is the right classification. In the interregnum and more importantly considering the fact that Petitioners have already demonstrated their bonafides by depositing the amount of Rs.32 crores, Court will have to consider the grounds.

11. It is vehemently argued by prosecution that Petitioners are resiling from their own undertaking which is in the nature of promise given to the Court for getting released on bail. *Prima facie* one has to see the reasons for the same. Petitioners have placed on record all *prima facie* material to demonstrate their present financial condition in view of the substantive deposit which has been already been made. The financial condition of the Petitioners' business is precarious. When the financial condition is precarious and plummeting and if the same does not get arrested at the right time, it results in financial death of the Company and the business.

12. Though the prosecution has relied upon the confessional statements under Section 108 of the Customs Act of the Petitioners and have urged the Court to consider the same from the point of view of misdeclaration by the Petitioners, the same will have to be considered and adjudicated by the prosecution.

13. *Prima facie*, at this stage what is required for me to consider is whether the Petitioners have shown their bonafides or not. First order against the Petitioners was passed on 26.09.2024, second order against the Petitioners was passed on 23.12.2024 and third order was passed on 26.03.2025. Petitioners have ensured that in the event of any difficulty on their part they have approached the Court well in advance. It is seen that in the first instance the Petitioners approached the Court on 12.12.2024 and explained their difficulty in complying with the payment. The Trial Court considered the Petitioners' case and put them to terms to deposit the amount of Rs.15 crores in two tranches over a period of 3 months. Petitioners deposited the first tranche of Rs.2 crores but were unable to meet the deposit of the second tranche of Rs. 13 crores. They have placed adequate reasons on record and *prima facie* those reasons require consideration by Court only because Petitioners before me have shown their bonafides otherwise.

14. In this regard, attention is drawn to the decision of the Supreme Court in the case of ***Radhika Agarwal Vs. Union of India and Ors.***[6] wherein paragraph No.61 pertains to interpretation of the guidelines for arrest and bail in relation to offence punishable under the Central Goods and Services Tax Act, 2017. For reference,

6 Writ Petition (Criminal) No.336 of 2018 – Decided on 27.02.2025.

paragraph No.61 of the said order is reproduced hereunder:-

> *"61. The Central Board of Indirect Taxes and Customs (GST-Investigation Wing), has accepted the said position vide circular dated 17.08.2022, the relevant portion of which reads as under:*
>
> *" F.No. GST/INV/Instructions/2021-22*
>
> *GST-Investigation Unit*
>
> *17th August 2022*
>
> *Instruction No. 02/2022-23 [GST – Investigation]*
>
> *Subject: Guidelines for arrest and bail in relation to offence punishable under the CGST Act, 2017 – reg.*
>
> *Hon'ble Supreme Court of India in its judgment dated 16th August, 2021 in Criminal Appeal No. 838 of 2021, arising out of SLP (Crl.) No. 5442/2021, has observed as follows:*
>
> > *"We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused."*
>
> *xx xx xx*
>
> ***3. Conditions precedent to arrest:***
>
> ***3.1*** *Sub-section (1) of Section 132 of CGST Act, 2017 deals with the punishment for offences specified therein. Sub-section (1) of Section 69 gives the power to the Commissioner to arrest a person where he has reason to believe that the alleged offender has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of*

Section 132 which is punishable under clause (i) or clause (ii) of subsection (1), or sub- section (2) of the Section 132 of CGST Act, 2017. Therefore, before placing a person under arrest, the legal requirements must be fulfilled. The reasons to believe to arrive at a decision to place an alleged offender under arrest must be unambiguous and amply clear. The reasons to believe must be based on credible material.

3.2 *Since arrest impinges on the personal liberty of an individual, the power to arrest must be exercised carefully. The arrest should not be made in routine and mechanical manner. Even if all the legal conditions precedent to arrest mentioned in Section 132 of the CGST Act, 2017 are fulfilled, that will not, ipso facto, mean that an arrest must be made. Once the legal ingredients of the offence are made out, the Commissioner or the competent authority must then determine if the answer to any or some of the following questions is in the affirmative:*

> *3.2.1 Whether the person was concerned in the non-bailable offence or credible information has been received, or a reasonable suspicion exists, of his having been so concerned?*
>
> *3.2.2 Whether arrest is necessary to ensure proper investigation of the offence?*
>
> *3.2.3 Whether the person, if not restricted, is likely to tamper the course of further investigation or is likely to tamper with evidence or intimidate or influence witnesses?*
>
> *3.2.4 Whether person is mastermind or key operator effecting proxy/ benami transaction in the name of dummy GSTIN or non-existent persons, etc. for passing fraudulent input tax credit etc.?*
>
> *3.2.5 As unless such person is arrested, his presence before investigating officer cannot be ensured.*

3.3 Approval to arrest should be granted only where the intent to evade tax or commit acts leading to availment or utilization of wrongful Input Tax Credit or fraudulent refund of tax or failure to pay amount collected as tax as specified in sub-section (1) of Section 132 of the CGST Act 2017, is evident and element of mens rea / guilty mind is palpable.

3.4 Thus, the relevant factors before deciding to arrest a person, apart from fulfillment of the legal requirements, must be that the need to ensure proper

> *investigation and prevent the possibility of tampering with evidence or intimidating or influencing witnesses exists.*
>
> *3.5 Arrest should, however, not be resorted to in cases of technical nature i.e. where the demand of tax is based on a difference of opinion regarding interpretation of Law. The prevalent practice of assessment could also be one of the determining factors while ascribing intention to evade tax to the alleged offender. Other factors influencing the decision to arrest could be if the alleged offender is co-operating in the investigation, viz. compliance to summons, furnishing of documents called for, not giving evasive replies, voluntary payment of tax etc.*
>
> *xx xx xx"*

15. The true purpose of bail is to ensure that the person who is enlarged on bail commits to the trial. Petitioners are having deep roots in the Society and there is no reason to disbelieve the same considering their background.

16. In that view of the matter, once Petitioners have shown their bonafides by depositing a substantial amount of Rs.32 crores which is delineated herein above, I am inclined to accept the submissions made by the learned Senior Advocate for Petitioners and consider the reasons and grounds on which the present Writ Petition is filed for modifying the bail condition.

17. I find that in view of the aforesaid observations and findings, Petitioners have made out a case for intervention of this Court and for modification of the condition No. [2.] in order dated 26.09.2024. The order dated 26.09.2024 therefore stands modified to the extent of

Petitioners requiring to deposit the amount of Rs.32 crores in place of Rs.45 crores as stated therein. This order shall be read alongwith order dated 26.09.2024.

18. Needless to state that complicity of Petitioners can be proved by prosecution in adjudication in accordance with law.

19. In view of the above, Writ Petition is allowed in terms of prayer clause (a) (ii) in the above terms and conditions.

20. It is clarified that Petitioners are not required to deposit any further amount with Respondent No.1 as delineated in the order dated 26.09.2024 apart from deposit of Rs.32 crores which has already been made.

21. Writ Petition is allowed and disposed in the above terms.

[MILIND N. JADHAV, J.]

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