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

## Anticipatory Bail Application No.1808 of 2025

1. Dipakkumar Dharamsinhbhai Kakadiya
Age: 49 years,
Add: 801, Shubh Lakshmi Residency,
Ved Gurukul Road, Surat, Gujarat-395004.

2. Kakadiya Brjieshkumar Vinodbhai
Age : 29 years
Add: 802, Shubh Lakshmi Residency,
Ved Gurukul Road, Surat, Gujarat-395004.

3. Kakadia Savitaben Dharamshi
Age : 72 years,
Add: 801, Shubh Lakshmi Residency,
Ved Gurukul Road, Surat, Gujarat-395004 … Applicants

versus

1. Directorate of Revenue Intelligence
Mumbai Zonal Unit, 13, Sir Vithaldas
Thackery Marg, New Marine Lines,
Mumbai-400020.

2. State of Maharashtra
High Court, Mumbai. ... Respondents.

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Dr Sujay Kantawala a/w Mr Sujit Sahoo, Mr Prateek Singh, Ms Ira Misra, Mr Mahadeo Londhe and Ms Aishwarya Kantawala for the applicants.

Mr Jitendra B Mishra a/w Mr Umesh Gupta, Mr Rupesh Dubey, Ms Sangeeta Yadav for respondent No.1.

Mr SV Walve, APP, a/w Mr Shahaji Shinde, 'B' Panel Counsel for the respondent No.2/ State.

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**Coram: R.N. Laddha, J.**
**Date: 31 July 2025.**

**P.C.:**

The applicants apprehend arrest and coercive action in connection with allegations involving both compoundable and non-baliable offences punishable under Sections 132 and 135 of the Customs Act, 1962. These apprehensions arise in the course of an ongoing investigation being conducted under File No.DRI/MZU/F/INT-32/Enq 17/2025/RA No.485 of 2025, by and/or at the instance of the respondent/ Directorate of Revenue Intelligence (DRI).

2. The investigation pertains to alleged acts of misdeclaration in the importation of goods, primarily walnuts, which are classified as freely importable items. These imports were mainly routed through the Nhava-Sheva Port. The DRI accuses the applicants of deliberately undervaluing the imported goods by submitting manipulated and fabricated invoices to evade customs duties. The transactions in question were carried out in the names of several entities: M/s Deepak Trading Company, M/s Angel Enterprises, M/s Deepak Kirana Stores, and M/s BV FEB.

3. Search and seizure operations were conducted in February 2025 in relation to the said allegations. It is submitted that applicant No.1 is the individual managing the affairs of the firms as mentioned above. Applicant No.2 is the nephew of applicant No.1, and applicant No.3 is the mother of applicant No.1.

4. Kakadiya Sneh Deepakbhai, son of applicant No.1, was arrested in connection with the present matter vide Remand Application No.485 of 2025. He has since been released on bail. The Remand Applications filed in the case alleged evasion of customs duty to approximately Rs.44 Crores, and copies of the said applications have been annexed to the present application for reference.

5. The Directorate of Revenue Intelligence (DRI) have filed the detailed replies opposing the anticipatory bail application. The DRI has raised preliminary objections on the issue of maintainability and is contesting the application on merits. In support of its opposition, the DRI has also placed reliance on an ex-parte order dated 3 July 2025 issued by the compounding authority, wherein the compounding application filed by the applicants was rejected as being premature.

6. The primary allegation in the case pertains to large-scale undervaluation in the import of 'Inshell Walnuts'. It is alleged that the *modus operandi* involved the submission of manipulated and fabricated invoices issued by Dubai-based entities to Indian Customs authorities, to suppress the true transaction value and thereby evade customs duties. It is further alleged that Sneh Deepakbhai Kakadiya, in his capacity as an authorised representative of the Dubai-based entity, had personally signed the aforementioned manipulated invoices. Additionally, actual invoices issued by a Chile-based supplier were recovered from Sneh Deepakbhai Kakadiya's email account, clearly indicating a significant discrepancy and deliberate under-invoicing. The estimated customs duty evaded in this manner is said to exceed Rs 44 Crores.

7. According to the respondent, similar practices are being adopted by multiple importers. The DRI also contends that applicant No.1 had previously sought and was granted time to appear in response to various summonses issued during the course of the investigation. However, rather than complying with those summonses, the applicants have now chosen to approach this Court for anticipatory bail. It is further stated that the co-accused, Sneh Deepakbhai Kakadiya's statements were recorded under CCTV surveillance, and the alleged

retraction of such statements is argued to be an afterthought.

8. The respondent has also raised concerns regarding non-cooperation by the applicants, expressing apprehension that the applicants may abscond, tamper with evidence, or attempt to influence witnesses. In support of its position, reliance has been placed upon the decisions in *Pankaj Karsanbhai Thacker Vs. State of Gujarat, Cri.Application (ABA) No.727 of 2023,* as well as the decision of the Hon'ble Supreme Court in *Union of India Vs. Padam Narain Aggarwal, Cri Appeal No.1575 of 2008 SC dated 3 October 2008.*

9. It is submitted that, as a general rule, applications for anticipatory bail should first be made before the Court of competent Sessions Court. In the present case, however, the remand applications were filed before the learned Additional Chief Metropolitan Magistrate, Esplanade, Mumbai, even though no specific allegation of mis-declaration has been made in Mumbai. The customs declarations in question were primarily made at Nhava-Sheva, located in District Raigad, with some declarations made at Mundra Port in Gujarat. Under such circumstances, the applicants cannot be expected to jeopardise their liberty by engaging in protracted arguments over territorial jurisdiction, specifically, whether the matter falls under the jurisdiction of the Sessions Court at Mumbai (where

remand proceedings of co-accused are being conducted) or the Sessions Court at Panvel District-Raigad, where the alleged offence was committed. Given these peculiar and complex jurisdictional facts, the applicants have exercised their right to approach this Court, which has concurrent territorial jurisdiction over both District Raigad and District Mumbai.

10. In this context, the applicants placed reliance upon the decisions in *Dr (Mrs) Roshan Sam Boyce Vs. BR Cotton Mills Ltd & Ors., as reflected in the order dated 16 January 2006 in IA Nos.7 of 2005 and 9 of 2006 in Civil Appeal No.1778 of 1990,* wherein it was held that it is not mandatory for a party to first approach the Sessions Court before seeking relief of anticipatory bail before the High Court. According to the learned Counsel, the objections raised by the respondent on maintainability are devoid of merit. Reliance on the decision of this Court in *Dr Sameer Narayanrao Paltevar Vs. State of Maharashtra, through Police Station Officer, 2021 SCC OnLine Bom 2192, Jagannath Ramghanora Biyani Vs. State of Maharashtra, 1981 SCC OnLine Bom 112* & other similar rulings is distinguishable in the context of the present case.

11. Furthermore, the applicants have filed a joint compounding application dated 1 July 2025 under Section

137(3)of the Customs Act, 1962, as a one-time statutory remedy prior to the initiation of prosecution, with the intention of avoiding multiplicity of proceedings, evading the rigours of prolonged litigation, and safeguarding their liberty. Through this application, the applicants have expressed their willingness to cooperate fully with the compounding authority and to pay the compounding fee as may be determined, along with any customs duty, interest, and penalty found due in accordance with law. An affidavit to this effect, dated 1 July 2025, has also been filed before the learned ACMM, Esplanade, Mumbai, in Remand Application No.485 of 2025.

12. Following the filing of the Compounding Application dated 1 July 2025, the Compounding Authority, by way of an *ex-parte* order dated 3 July 2025, rejected the application as premature and inadmissible. The grounds cited were that the application had been filed during the pendency of the investigation and prior to the determination and payment of duty, penalty, and interest. However, the said order dated 3 July 2025 was subsequently set aside in a statutory appeal by the CESTAT. The compounding application was restored, with the Tribunal placing reliance *inter alia* on the decision in *Imran Latif Shirgawkar Vs. Directorate of Revenue Intelligence, Mumbai, 2019 (368) E.L.T. 1052 Bom.* In that decision, the

Court rejected the contention that a compounding application filed during the investigation stage, before final quantification and payment of liability, was inadmissible. It was also held therein that the alleged offence was bailable, bail was granted accordingly, and it was further directed that any interrogation of the applicant be conducted in the presence of his advocate, positioned at a visible but not audible distance, with the entire process being videographed.

13. In the present case, it is admitted that a statement of applicant No.1 was recorded on 20 March 2025. Since then, however, he has not joined the investigation. The applicants have expressed apprehensions about coercive methods during further interrogation and recording of their statements. Accordingly, they seek safeguards, specifically, the presence of their advocate at a visible but not audible distance during the interrogation and videography of the proceedings, reliefs which have been granted in multiple cases by this Court, notably, in *Deputy Director, DRI, Mumbai Zonal Unit Vs. Kaja Abdul Hameed & Anr., 2019 SCC OnLine Bom 5363*, the Court modified the Sessions Court direction in an anticipatory bail matter, limiting the advocate's presence to a visible but not audible distance during the interrogation.

14. The search and seizure operations in this matter have

already been concluded. The primary allegation pertains to the submission of false declarations, and it is undisputed that the case rests predominantly on documentary evidence. The allegedly forged declarations and their supporting documents are already in the possession of the customs department. Furthermore, access to relevant emails has been provided by the son of applicant No.1, who was arrested and subsequently released on bail. There is no record of any prior convictions against the applicants.

15. The applicants have demonstrated their willingness to pursue the statutory remedy of compounding the alleged offence. In this context, they may be directed to cooperate with the investigation, subject to appropriate conditions to allay the concerns of the investigating authority.

16. It is submitted that while the mere filing or pendency of a compounding application may not, in itself, be an absolute ground for the grant of anticipatory or regular bail in every instance, as held in *Nilesh Yogesh Jagiwala Vs. Superintendent (Anti Evasion) Central GST and Central Excise & Anr., 2020 SCC OnLine Bom 10998*, where cancellation of bail was upheld based on the facts of that particular case. In that case, the applicant therein had not filed any compounding

application. But in the present case, the applicants have already submitted an application for compounding the offence and it is pending before the competent authority. The statutory framework for compounding under Section 137(3) of the Customs Act, 1962, is designed to facilitate the settlement of offences without compromising on the recovery of lawful revenue. It allows for the filing of a compounding application at any stage, either before or after institution of prosecution, provided that the goods involved are freely importable and the case does not fall within the exceptions enumerated in the proviso to Section 137(3). It is not in dispute that an application for compounding, once filed, can only be allowed upon the applicant depositing the amounts determined as due, including customs duty, interest, and penalty, along with the compounding fees as may be determined by the Authority. In the present case, the applicants have already submitted affidavits undertaking compliance with these requirements.

17. The object of the compounding mechanism is to ensure enforcement of the Act while providing a route for voluntary compliance and avoidance of protracted litigation or incarceration. In the past, the Courts extended interim protection to the applicants therein during the pending investigation under the Customs Act and the Central Excise

Act. Illustratively:*Manoj Arun Gore Vs. Union of India & Ors., Cri.WP No.1649 of 2005 dated 30 June 2005; Sadruddin Basar Khan Vs Union of India & Ors, Cri WP No.1648 of 2005 dated 30 June 2005; Mahesh Mehta Vs Union of India & Ors., Cri WP No.2695 of 2005 dated 27 October 2005. Similarly, in Sita Ram Aggarwal Vs Customs, 2005 SCC OnLine Del 61*, the Delhi High Court granted regular bail primarily on the basis that the offence under the Customs Act, 1962, was compoundable, moreover, in *Bhimendra Kumar Goyal Vs. Union of India & Ors., WP (Cri) No.93 of 2009 dated 30 October 2009,* the Hon'ble Supreme Court restrained the authorities from taking coercive steps against the petitioner, in light of a compounding application being under contemplation during the course of investigation.

18. In the totality of the circumstances, and in the facts of the present case, the applicants' willingness to comply with compounding provisions, the stage of the investigation, absence of prior criminal record, the documentary nature of the evidence, the willingness on the part of the applicants to jointly deposit a total amount of Rs.5 Crores with the respondent, and the completion of search and seizure operations collectively merits consideration. Accordingly, this Court deems it fit to allow this application subject to the following conditions :

(i) In the event of the applicants' arrest in connection with File No.DRI/MZU/F/INT-32/Enq 17/2025/RA No.485 of 2025, by and/or at the instance of respondent/ DRI, they shall be released on bail, upon executing a PR Bond of Rs.25,000/- each and furnishing one or more sureties in the like amount.

(ii) The applicants shall report to the office of the investigating agency as required and cooperate with the investigation. Any statements recorded shall be in the presence of their advocate, who may remain at a visible but not audible distance. The proceedings shall be videographed.

(iii) The applicants shall, jointly, deposit a total amount of Rs.5 Crores with the respondent within one week from the date of this order.

(iv) The applicants shall not, either directly or through any other person, tamper with the evidence or attempt to influence any witnesses.

19. The application stands disposed of accordingly.

**[ R.N. Laddha, J.]**