

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

APPLICATION FOR LEAVE TO APPEAL (STATE) NO. 8 OF 2025

Commissioner of Customs, Prosecution Cell, CSMIA, Mumbai Through Patel Paresh Jashwantlal V/S	Appellant
Ms Marin D/o Kazuyoshi Kataigi & Ors.	Respondents

Mr. Atif Noorhasan Shaikh for the Applicant
Mr. A. M. Sachwani a/w. Mr. V. M. Advani and Mr. R. R. Shah for the
Respondents.
Mr. Tanveer Khan, APP for the Respondent-State.

CORAM : M. M. SATHAYE, J.

DATED : 5th MAY 2026

P.C.:

1. Heard learned Counsel for the parties.
2. This is an Application by the Commissioner of Customs seeking leave to file Appeal challenging the order of acquittal dated 26.04.2024 passed by Additional Chief Metropolitan Magistrate, 19th Court, Esplanade, Mumbai in C.C. No. 44/SW/2021. By the said impugned order, the Respondents/Accused Nos. 1 and 2 have been acquitted of the offence punishable under Section 132, 135(1)(a), 135(1)(b) punishable under section 135(1)(i) of the Customs Act, 1962 read with section 3(a), (c), (d) of FEMA, 1999, Section 5 of Foreign Exchange Management (Export and Import of Currency) Regulation, 2015 and Section 120B of Indian Penal Code, 1860.

3. Learned Counsel for the Applicant submitted that the learned Magistrate was not justified in granting acquittal, when the seizure of foreign currency from the hand bags is brought on record by cogent and corroborative evidence which is so recorded in paragraph 51 of the impugned judgment. He further submitted that once the sanction for prosecution is brought on record, it was not necessary to examine the sanctioning authority and the person well versed with the sanction i.e. PW.-1 is examined.

4. On the other hand, learned Counsel for the Respondent Nos. 1 and 2/Accused No. 1 and 2 opposed the application contending *inter alia* that the impugned order rightly considers the doubt in respect of the application of mind by the sanctioning authority. He submitted that though the sanction document makes a reference to 4 persons apparently involved, including Mr. Prashant J. Thadeshwar, who is the jeweler as well as Mr. Ohashi Shunsuke, another Japanese person involved in the case, sanction was ultimately accorded for only two persons, who are present Respondent Nos. 1 and 2. Therefore, there is reasonable doubt about application of mind, for which sanctioning authority ought to have been examined. It is further submitted that the statements are recorded in jail during judicial custody and in english language, which the Respondent No. 1 and 2 did not understand.

5. I have considered the submissions and perused the impugned judgment.

6. At the outset, it is necessary to note that under order dated 08.05.2025 passed in IA/1806/2025, Respondent Nos. 1 and 2 have been permitted to travel to Japan. Their passports have been returned. It is

informed that Respondent Nos. 1 and 2 have complied with the conditions placed upon them about providing itinerary, address and contact number in Japan and furnishing cash deposit.

7. Learned Magistrate has categorically held that seizure of foreign currency from the hand bags is brought on record by cogent and corroborative evidence. But it is held that there is no reliable evidence that those were belonging to Accused No. 1.

8. According to the prosecution, Accused No. 1 on being asked as to how much foreign currency she is carrying in-person, had replied that she is not carrying any foreign currency in-person or in baggage and since the authority was not satisfied with reply, personal search was taken. According to prosecution, on search it was found that a grey coloured bag found in possession of the Accused No. 1 contained US dollars currency worth 1,20,000 dollars concealed in the clothes and other items and the pink coloured nylon hand bag contained currency worth 60,000 US dollars concealed.

9. So far as Accused No. 2 is concerned, according to prosecution, the currency was handed over by him which he got from selling the gold smuggled from Bangkok, for which two purchase bills were submitted, both in the name of Accused No. 1.

10. Considering the above case of the prosecution and the gravity of offence involved, and further considering the fact that the sanction was produced on record, whether the sanction is doubtful and whether the sanction was accorded without application of mind, as also the aspect as to whether the accused were involved in the smuggling of gold into India as

alleged, requires deeper consideration on the basis of appreciation of evidence. In any case, this is not a case where the judgment of the Trial Court needs no reconsideration.

11. In that view of the matter, case for grant of leave is made out.

12. The application is allowed. **Leave is granted to Applicant to file Appeal.** Appeal be numbered.

13. **Appeal is admitted.** Call for records and proceedings. Learned counsel for Respondent No. 1 and 2 waive service.

(M. M. SATHAYE, J.)