

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 338 OF 2026

1. Shaun Stany Noronha
2. Sushant Kishor Manna ...Petitioners

Versus

1. Union Of India
2. State of Maharashtra ...Respondents

Mr. Aabad Ponda, Senior Advocate a/w Mr. Bhomesh Bellam,
for the Petitioners.

Smt. Megha Bajoria, Special PP, a/w Chirag Sawant for the
Respondent No.1-UOI.

Smt. R. S. Tendulkar, APP for State-Respondent No.2.

CORAM: N. J. JAMADAR, J.
Reserved On: 3rd FEBRUARY, 2026
Pronounced On: 6th FEBRUARY, 2026

JUDGMENT:-

Rule. Rule made returnable forthwith, with the consent of
the learned Counsel for the parties heard finally.

1. This petition calls in question the legality and correctness
of an order dated 20th January, 2026, passed by the learned
Additional Chief Judicial Magistrate, Mumbai, whereby the
learned Magistrate declined to release the petitioners on bail
holding that the offences for which the Petitioners were
arraigned, under Section 135(1)(i) of the Customs Act, 1962
("the Customs Act"), were non-bailable.

2. The petitioners claim to be the employees of Shiny
Shipping and Logistics Pvt. Ltd. ("Shiny Shipping"). Shiny
Shipping owns multiple vessels including M. V. Tina 4, which is

ARUN
RAMCHANDRA
SANKPAL

Digitally signed by
ARUN
RAMCHANDRA
SANKPAL
Date: 2026.02.07
17:44:23 +0530

an Inland Vessel registered under the Inland Vessels Act, 1917. The said vessel holds a valid licence for transporting petroleum. Shiny Shipping, according to the petitioners, purchases High Flash High Speed Diesel ("HFHSD") regularly to fuel the engines of the vessels.

3. Pursuant to an intimation, on 17th January, 2026, the officers attached to Rummaging and Intelligence Division of Commissioner of Customs (Preventive) intercepted M. V. Tina⁴. During rummaging of the said vessel, approximately 120 KL grey blackish coloured liquid purported to be diesel was found concealed in forward freshwater tank and in service tank. Cash amount of Rs.4,00,000/- was also found concealed in the ceiling of the Master's cabin. A seizure-memo was drawn.

4. After initial interrogation, and recording of the statements of the petitioners, they were arrested on 20th January, 2026. The petitioners were served with their grounds of arrest and reasons for arrest. The petitioners were produced before the learned Magistrate.

5. The Petitioners contended that, the arrest of the petitioners was not in conformity with law and the threshold of satisfaction and the pre-conditions for effecting the arrest of the petitioners under Section 104(1) of the Customs Act were not

satisfied. Secondly, from the documents annexed to the remand report including the seizure-memo, the grounds of arrest and the reasons for arrest, it became evident that the offences for which the petitioners were arraigned were bailable and, thus, the petitioners deserved to be enlarged on bail.

6. The learned Magistrate found the arrest of the petitioners in conformity with the provisions contained in Section 104 of the Customs Act and the provisions of the Bharatiya Nagarik Suraksha Sanhita, 2023, (“BNSS”). Recording that the offences, for which the petitioners have been arraigned, are non-bailable, the learned Magistrate declined to release the petitioners on bail.

7. Being aggrieved, the petitioners have invoked the writ jurisdiction.

8. I have heard Mr. Aabad Ponda, the learned Senior Advocate for the petitioners, and, Smt. Megha Bajoria, the learned Special P. P., for respondent No.1 – UOI.

9. Mr. Ponda canvassed a two-pronged submission. First, the arrest of the petitioners was wholly illegal. The test of “reason to believe” was not satisfied. From the perusal of the seizure-memo, the grounds of arrest and the reasons for arrest,

it becomes evident that there was, no “material” with respondent No.1 to justify an inference that, the petitioners had committed the offences punishable under Clauses (A), (B) and (C) of Section 135(1)(i) of the Customs Act. On the contrary, the arrest memo would show a clear non-application of mind as the officer effecting the arrest has recorded that the petitioners committed the offences punishable under Sections 132 or 133 or 135 or 135A or 136 of the Customs Act. Such omnibus reference to the offences allegedly committed by the petitioners, in the alternatives, indicates that the arrest did not satisfy the threshold of the reasonable belief that the petitioners had committed the offences.

10. Thirdly, Mr. Ponda would urge, even if the case of the Customs Department is taken at par, yet, in the facts of case, the offence allegedly committed by the petitioners would be bailable. Mr. Ponda would urge, on the own-showing of respondent No.1 120 KL of gray blackish coloured liquid purported to be diesel was found on the vessel. It was not the case of respondent No.1 that by the alleged illegal import of diesel there was evasion or attempted evasion of duty exceeding Rs. Fifty Lakh or the market price of the allegedly illegally imported commodity exceeded Rs.One Crore. Nor the Customs

Department claimed that the seized commodity was notified under sub-clause (c) clause (i) of sub-section (1) of Section 135. Consequently, Clauses (a)(b) and (c) of sub-section (6) of Section 104 were not attracted. Once, the offence does not fall within the ambit of clauses (a) to (e) of sub-section (6) of Section 104, the residuary sub-section (7) of Section 104, which declares all other offences under the Customs Act as bailable, comes into play.

11. Mr. Ponda strenuously submitted that, having realized the unsustainability of the case built against the petitioners till 20th January, 2026, an abortive attempt was made to bolster up the prosecution case by producing before the learned Magistrate a certificate purportedly issued by Sharani Associates, Chartered Engineer and IBBI Registered Valuer, dated 20th January, 2026, to the effect that, the proximate quantity of the diesel found on the vessel was 178 KL and, thus, the value of the illegally imported goods was Rs.1,33,50,000/- at the rate of Rs.75/- per liter. Secondly, a Notification purportedly issued by Director General of Foreign Trade dated 13th November, 2019 was also pressed into service to show that the offence was in relation to prohibited goods and, thus, clause (b) of sub-section (6) of

Section 104 was attracted. None of these documents stand to scrutiny, submitted Mr. Ponda.

12. An effort was made by Mr. Ponda to demonstrate that the report of Sharani Associates is inherently unreliable. In any event, there was no material to show that the value of the goods exceeded Rs.1 Crore when the petitioners were arrested. The claim of the Customs Department that the seized goods were prohibited goods is belied by the facts that there is no Notification under sub-clause (c) of clause (1) of sub-section (1) of Section 135. Mere declaration of the goods as prohibited goods by a Notification under Section 11 of the Customs Act is not sufficient to make the offences in relation to such goods non-bailable. Therefore, the learned Magistrate committed a grave error in law in holding that the offences were non-bailable and depriving the personal liberty of the petitioners. Thus, this Court must intervene by exercising judicial review.

13. A very strong reliance was placed by Mr. Ponda on the judgment of the Supreme Court in the case of *Radhika Agarwal vs. Union of India and others*¹.

14. Per contra, Smt. Bajoria submitted with equal tenacity that, no case for exercise of judicial review is made out. The

¹ (2025) 6 Supreme Court Cases 545.

petitioners are in effect assailing an order passed by the learned Magistrate denying the bail. Thus, a writ petition against such an order is not tenable. The petitioners will have to work out their remedies to seek bail in accordance with the provisions of law. The impugned order neither suffers from jurisdictional error nor patent illegality and, thus, cannot be interfered with in exercise of writ jurisdiction. It was urged that the writ jurisdiction cannot be used as a substitute for bail proceeding especially at the nascent stage of the investigation.

15. To buttress these submissions, Smt Bajoria placed reliance on the observations in the case of *Radhika Agarwal (Supra)* in relation to powers of judicial review under Article 32 and Article 226 of the Constitution of India, when the arrest of a person is challenged.

16. Smt. Bajoria joined the issue on the aspect of the necessity of arrest by canvassing a submission that the conscious possession of illegally imported prohibited commodity is *prima facie* evident from clandestine concealment of the commodity in non-cargo tanks. In addition, unaccounted cash amount was recovered. From the attendant circumstances, the statutory threshold of reasonable belief of the commission of the offence can be said to have been satisfied.

17. Smt. Bajoria would urge that the grounds of arrest disclose the requisite material and satisfaction. The contentions of the Petitioners as regards inadequacy of the grounds of arrest and the reasons of arrest to satisfy the test of necessity of arrest do not merit acceptance at this stage, was the thrust of the submission of Smt. Bajoria. Reliance was placed on the judgment of the Supreme Court in the case of *Kasireddy Upender Reddy Vs State of Anhdra Pradesh and Ors*²

18. Smt. Bajoria would urge the satisfaction arrived at by the learned Magistrate that the offences appeared to be non-bailable, at this stage, cannot be faulted at. A submission was sought to be canvassed that the valuation of the illegally imported commodity and the qualification of the commodity are matters of investigation. The seizure memo and the contemporaneous documents do record that the quantity found was approximately 120 KL. The exercise of quantification of the commodity and the market price thereof was underway and the relevant documents were placed before the learned Magistrate before the remand order. Therefore, the Petitioner cannot draw any mileage from the said fact, especially at the stage of remand. Neither the arrest nor the remand is vitiated on the

2 2025 LiveLaw (SC) 628.

basis of mere contestation of the quantity and value of the illegally imported commodity.

19. Smt. Bajoria further urged that, the offence allegedly committed by the Petitioners does fall within the ambit of clause (b) of sub-Section (6) of Section 104 and has, thus, been rightly held by the learned Magistrate to be non-bailable.

20. The notifications issued by the Director General of Foreign Trade under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992, render the seized goods prohibited goods for the purpose of Clause (b) of sub-Section (6) of Section 104 of the Customs Act. To this end, Smt Bajoria placed reliance on the judgments of the Supreme Court in the cases of **Union of India and Ors Vs M/s Raj Grow Impex LLP & Ors³** and **Union of India and Ors Vs Agricas LLP & Ors Etc⁴**.

21. Lastly Smt. Bajoria would urge that, even if it is held that the offences were bailable, neither the arrest nor the remand order can be said to be without jurisdiction, and, thus, the proper course for the Petitioners would be to seek bail and not assail the impugned order by invoking the writ jurisdiction.

3 (2021) 18 SCC 601.

4 (2021) 14 SCC 341.

22. To start with it may be apposite to note the provisions contained in Section 135 and Section 104 of the Customs Act. The relevant part of Section 135 reads as under:

135. Evasion of duty or prohibitions.

(1) Without prejudice to any action that may be taken under this Act, if any person—

(a) is in relation to any goods in any way knowingly concerned in misdeclaration of value or in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any prohibition for the time being imposed under this Act or any other law for the time being in force with respect to such goods; or

(b) acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111 or section 113, as the case may be; or

(c) attempts to export any goods which he knows or has reason to believe are liable to confiscation under section 113; or

(d) fraudulently avails of or attempts to avail of drawback or any exemption from duty provided under this Act in connection with export of goods; or

(e) obtain an instrument from any authority by fraud, collusion, wilful representation or suppression of facts and such instrument has been utilised by such person or any other person,

he shall be punishable,—

(i) in the case of an offence relating to,—

(A) any goods the market price of which exceeds one crore of rupees; or

(B) the evasion or attempted evasion of duty exceeding fifty lakh of rupees; or

(C) such categories of prohibited goods as the Central Government may, by notification in the Official Gazette, specify; or

(D) fraudulently availing of or attempting to avail of drawback or any exemption from duty referred to in clause (d), if the amount of drawback or exemption from duty exceeds fifty lakh of rupees; or

(E) obtaining an instrument from any authority by fraud, collusion, wilful misstatement or suppression of facts and such instrument has been utilised by any person, where the duty relatable to utilisation of the instrument exceeds fifty lakh rupees.

with imprisonment for a term which may extend to seven years and with fine:

PROVIDED that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, such imprisonment shall not be for less than one year;

(ii) in any other case, with imprisonment for a term which may extend to three years, or with fine, or with both.

23. Section 104 of the Code reads as under:

“104. Power to arrest.

(1) If an officer of customs empowered in this behalf by general or special order of the Principal Commissioner of Customs or Commissioner of Customs has reason to believe that any person has committed an offence punishable under section 132 or section 133 or section 135 or section 135A or section 136, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every person arrested under sub-section (1) shall, without unnecessary delay, be taken to a magistrate.

(3) Where an officer of customs has arrested any person under sub-section (1), he shall, for the purpose of releasing such person on bail or otherwise, have the same powers and be subject to the same provisions as the officer-in-charge of a police-station

has and is subject to under the Code of Criminal Procedure, 1898 (5 of 1898).

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence relating to—

- (a) prohibited goods; or
- (b) evasion or attempted evasion of duty exceeding fifty lakh rupees; or
- (c) fraudulently availing of or attempting to avail drawback or any exemption from duty provided under this Act, where the amount of drawback or exemption from duty exceeds fifty lakh rupees; or
- (d) fraudulently obtaining an instrument for the purposes of this Act or the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992), and such instrument is utilised under this Act, where duty relatable to such utilisation of instrument exceeds fifty lakh rupees.

Shall be cognizable.

(5) Save as otherwise provided in sub-section (4), all other offences under the Act shall be non-cognizable.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2 of 1974) an offence punishable under section 135 relating to—

- (a) evasion or attempted evasion of duty exceeding fifty lakh rupees; or

(b) prohibited goods notified under section 11 which are also notified under sub-clause (c) of clause (i) of sub-section (1) of section 135; or

(c) import or export of any goods which have not been declared in accordance with the provisions of this Act and the market price of which exceeds one crore rupees; or

(d) fraudulently availing of or attempt to avail of drawback or any exemption from duty provided under this Act, if the amount of drawback or exemption from duty exceeds fifty lakh rupees; or

(e) fraudulently obtaining an instrument for the purposes of this Act or the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992), and such instrument is utilised under this Act, where duty relatable to such utilisation of instrument exceeds fifty lakh rupees.

Shall be non-bailable.

(7) Save as otherwise provided in sub-section (6), all other offences under this Act shall be bailable.

[Explanation.—For the purposes of this Section, the expression “instrument” shall have the same meaning as assigned to it in Explanation 1 to section 28AAA.

24. Sub-Section (1) of Section 104 empowers the empowered Customs Officer to arrest a person, if he has reason to believe that such person has committed an offence punishable under

Sections 132, 133, 135, 135A or 136 of the Customs Act. Upon arrest such Officer is enjoined to inform the arrestee the grounds for such arrest, as soon as may be. Sub-Section (2) of Section 104 casts a duty to take the arrested person before a Magistrate without unnecessary delay. Sub-Section (3) of Section 104 confers on the Officer effecting the arrest, the powers conferred on the Officer in-charge of a Police Station in the matter of release of such person on bail or otherwise. Sub-Section (4) of Section 104 designates the offences specified under Clauses (a) to (d) as cognizable and rest of the offence as non-cognizable.

25. Sub-Section (6) of Section 104 is of critical significance in the context of controversy at hand. Five categories of offences punishable under Section 135 specified in Clauses (a) to (e) are declared non-bailable. The rest of the offences under the Customs Act are bailable.

26. In the context of controversy at hand, Clauses (d) and (e) of sub-Section (6) of Section 104 are not attracted. The controversy revolves around the question as to whether there were reasonable grounds for arrest of the Petitioners in relation to offences punishable under Section 135(1)(i)(A), (B) and (C), and, secondly, whether those offences fall within the dragnet of

(a), (b) and (c) of sub-Section (6) of Section 104 and, thus, non-bailable.

27. The first question that would warrant consideration is whether there were reasons to believe that the Petitioners had committed the offences punishable under Sections 132, 133, 135, 135A or 136 of the Customs Act and, there was necessity of arrest. The expression used in sub-Section (1) of Section 104 is “has reason to believe that any person has committed an offence”.

28. What is the import of the said expression? Whether the said expression is equivalent to reason to believe that a person is guilty of the offence? And what standard applies to satisfy the threshold or pre-conditions for arrest? were the questions, the Supreme Court was called upon to consider in the case of *Radhika Agarwal (Supra)* .

29. After comparing and contrasting the provisions contained in Section 19(1) of the Prevention of Money Laundering Act, 2002 (“the PMLA Act”) and Section 104 (1) of the Customs Act, the Supreme Court enunciated that there was substantially no difference between a person being guilty of an offence and a person committing an offence.

30. Applying plain language interpretation, the Supreme Court explicated that, a person being guilty of an offence and a person committing an offence is self-same and identical in so far as Section 19(1) vis-a-vis Section 104(1) is concerned. The Supreme Court, further, clarified that the absence of the term, “on the basis of material in his possession” which precede the “reason to believe” in Section 19(1) of the PMLA Act and which does not find mention in Section 104(1) of the Customs Act, does not make any qualitative difference on the threshold of the satisfaction of necessity of arrest on the basis of reasonable belief to be specified under Section 104(1) of the Customs Act. It was in terms observed that, the fact that Section 104 (1) does not explicitly require a Customs Officer to have, “material in their possession” does not imply that a Customs Officer can conclude that an offence has been committed out of thin air or mere suspicion. The threshold for arrest under Section 104(1) of the Customs Act is higher than that under Section 41 of the Code of Criminal Procedure, 1908, by stipulating that the Customs Officer may only arrest a person if they have, “reason to believe” that a person has committed an offence. A person is said to have a “reason to believe” a thing, if they have sufficient cause to believe that thing but not otherwise. This represents a

more stringent standard than the “mere suspicion” threshold provided under Section 41.

31. With reference to the provisions that explicitly classify offences into bailable and non-bailable, as well as cognizable and non-cognizable under sub-Sections (4) to (7) of Section 104 of the Customs Act, the Supreme Court emphasised in clear and explicit terms that, *“the reasons to believe” must reflect these classification when justifying an arrest.*”

32. The observations in paragraph 46 of the judgment in the case of ***Radhika Agarwal (Supra)*** are of material salience in the context of the controversy at hand and, hence, extracted below:

“46. Thirdly, given the framework of the Customs Act, which explicitly classifies offences into bailable and non-bailable, as well as cognizable and non-cognizable, the “reasons to believe” must reflect these classifications when justifying an arrest. The reasoning must weigh in why an arrest is being made in a specific case, particularly given the specific severity assigned to the offence by the legislature. The reasoning must also state how the monetary thresholds outlined in the Act are met. Subclauses (b) to (d) of Section 104(4) provide monetary thresholds for cognizable offences, while subclauses (a) and (c) to (e) of Section 104(6) provide those for non-bailable offences. The “reasons to believe” must include a computation and/or an explanation, based on factors such as the goods seized, from which a conclusion of guilt can

be drawn. This level of detail is crucial, as it facilitates judicial review of the exercise of the power to arrest. The department's authority to arrest under Section 104 hinges on satisfying these statutory thresholds."

33. In relation to the classification of the offences with reference to Clauses (a) and (c) to (e) of sub-Section 104(6) — the non-bailable offences — the Supreme Court has ordained that reasons to believe must have a computation and/or an explanation, based on factors such as the seized goods from which a conclusion of guilt can be drawn. The necessity of such computation and/or explanation was emphasised from the point of view of facilitation of general review of the exercise of the power of arrest. Thus, the broad submission on behalf of the Respondent that at the stage of consideration of the challenge to the validity of arrest and remand, the quantification and valuation of seized goods need not to be delved into cannot be unreservedly countenanced.

34. Consistent with the aforesaid enunciation of law, if an accused is alleged to have committed an offence of evasion of duty or prohibition under Section 135 of the Customs Act in relation to Clause (A) of sub-Section (1)(i) of Section 135, the Officer effecting the arrest must have reason to believe that the

market price of the goods exceeds One Crore of Rupees; in relation to Clause (B) that the evasion or attempted evasion of duty exceeds 50 Lakhs Rupees and under Clause (C), the offence is in relation to the specified category of prohibited goods.

35. Consequently, the material on record ought to justify that the Customs Officer had reason to believe that the offences were non-bailable under clauses (a) and (c) of sub-Section (6) of Section 104 for evasion of duty exceeding Rs. 50 Lakhs or the market price of the goods exceeds Rs. 1 Crore, respectively, and for the applicability of clause (b) the goods were prohibited.

36. Thus, when an accused person is produced before the learned Magistrate with the allegations that the offences allegedly committed by such person are non-bailable within the meaning of Clauses (a) to (c), of sub-Section (b) of Section 104, the enquiry in relation to the value of evaded duty, market price of goods and the character of the goods, assumes significance.

37. In the facts of the case at hand, clause (a) of sub-section (6) of Section 104 of the Customs Act has, evidently, no application. It is not the case of the respondent that there was evasion of duty exceeding Rupees Fifty Lakhs.

38. The contentious issue is, whether the allegedly illegally imported goods i.e. diesel, is a “prohibited good” within the meaning of clause (b) of sub-section (6) of Section 104. To retain emphasis, clause (b) of sub-section (6) of Section 104 is extracted below:

“(b) prohibited goods notified under section 11 which are also notified under sub-clause (c) of clause (i) of sub-section (1) of section 135.”

39. As noted above, Smt. Bajoria made a strenuous effort to draw home the point that the Notification dated 13th November, 2019 issued in exercise of powers conferred by Section 5 of the Foreign Trade (Development and Regulation) Act 1992, by the Director of General of Foreign Trade, renders the diesel imported otherwise through State Trading Enterprises, a prohibited good. Whether this submission is sustainable?

40. Under Clause (33) of Section 2 of the Customs Act, unless the context otherwise requires, “prohibited goods” means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.

41. Prohibited goods are thus defined as the goods, the import or export of which is subject to prohibition under the Customs Act or any other law for the time being in force, save and except the goods which have been imported or exported in compliance with the prescribed conditions. Undoubtedly, the goods, the import or export of which is prohibited under any other law also constitute prohibited goods. However, the definitions under Section 2 of the Customs Act are subject to the rider, “unless the context otherwise requires.”

42. On a plain reading of clause (b) of sub-section (6) of Section 104, it becomes abundantly clear that the Parliament has designedly provided a different connotation for the term ‘prohibited goods’ so as to render the offences in relation thereto, non-bailable. Firstly, the goods must be notified as prohibited under Section 11 of the Customs Act. It implies that if the goods are prohibited under any other provisions of the Customs Act itself, they would not qualify as prohibited goods under clause (b). Secondly, there is an added requirement, namely, in addition to Notification under Section 11 those goods shall also be notified under sub-clause (C) of clause (i) of sub-section (1) of Section 135 of the Customs Act. For ease of

reference sub-clause (C) of clause (i) of Section 135(1) of the Customs Act is again extracted below:

“(C) such categories of prohibited goods as the Central Government may, by notification in the Official Gazette, specify;”

43. A conjoint reading of clause (b) of sub-section (6) of Section 104 and sub-clause (C) of clause (i) sub-section (1) of Section 135 of the Customs Act, would indicate that there must be a specific notification in respect of prohibited goods under sub-clause (C) of clause (i) of Section 135(1) of the Customs Act. It is elementary that the aforesaid provisions, being penal in nature, and having a bearing upon the personal liberty of the accused arraigned for the offence punishable under Section 135 of the Customs Act, require strict construction. Therefore, to fall within the tentacles of clause (b) of sub-section (6) of Section 104 of the Customs Act the goods must first be notified as prohibited goods under Section 11, and those goods must also be notified under sub-clause (C) of clause (i) of Section 135(1) of the Customs Act.

44. It is not the case of the prosecution that there is such Notification under Section 135(1)(i)(C) of the Customs Act prohibiting the import of diesel. Mr. Ponda by way of illustration drew attention of the Court to a Notification dated 13th May,

2008 issued under the said section specifying “fake currency notes” as goods falling under the category of prohibited goods for the purposes of the said section, to show that such power has been resorted to.

45. Reliance sought to be placed by Smt. Bajoria on the judgments in the cases of *Union of India vs. Agricas Llp and others Etc.*⁵ and *Union of India vs. M/s. Raj Grow Impex LLP and ors.*⁶ is inapposite as those judgments do not deal with the aspect of prohibited goods from the perspective of the offences in relation thereto being bailable or non-bailable. Resultantly, it must be held that the provisions contained in clause (b) sub-section (6) of Section 104 have no application to the facts of the case at hand.

46. This propels me to the question of the offences being non-bailable for the reason that the market price of the illegally imported goods exceeded Rupees One Crore. A brief reference to the contemporaneous documents would be necessary. Firstly the seizure-memo records that approximately 120 KL of gray blackish coloured liquid purported to be diesel was found on the vessel. Secondly, in the grounds of arrest communicated to the

5 Transfer Petition (Civil) Nos.496-509/2020, dtd.26/8/2020.

6 Civil Appeal No(s). 2217-2218/2021 dtd.17/6/2021.

petitioners it was reiterated that the total quantity of the diesel was approximately 120 KL and the value of the seized goods was more than Rupees Fifty Lakhs. Thirdly, in the reasons for arrest, recorded by the Intelligence Officer, it was again recorded that approximately 120 KL of diesel was found and seized and its value was more than Rupees Fifty Lakhs. Lastly, in the application filed before the Magistrate seeking judicial custody of the petitioners, it was asserted that, in the statements of the petitioners recorded under Section 108 of the Customs Act, the petitioners conceded that approximate quantity of 120 KL of liquid, purported to be diesel, was found. The final quantification of the imported goods i.e. purported to be high speed diesel and its valuation could not be done at the time of examination and rummaging as it was a weekend and surveyors were not present.

47. The aforesaid contemporaneous record thus unmistakably indicates that at no point in time until the arrest of the petitioners and their production before the learned Magistrate, it was the case of the prosecution that the market price of the allegedly illegally imported goods exceeded Rupees One Crore. On the contrary, the fact that the value of seized goods was stated to be above Rupees Fifty Lakhs, indicates that the

Customs Officer effecting the arrest of the petitioners was alive to the position that the value of the seized goods had a bearing upon the complicity of the petitioners.

48. It appears that, after the petitioners were produced before the Magistrate, a purshis was filed in Remand Application No.76/2026 and the certificate of valuation issued by Sharani Associates dated 20th January, 2026 was produced. In the said certificate, the valuer reported that the approximate quantity of diesel was 178 KL and the realizable value was Rs.1,33,50,000/- at the rate of Rs.75/- per liter. The brief justification for the assessment is of material significance. It reads as under:

“12. Brief Justification

We have physically examined the detained Barge. The storage Tanks filled with diesel were noted down for calculating the quantities. On Physical Examination we found documents pertaining to the barge. The cross sectional drawing showing the tank capacities were matched with the tanks examined filled with illicit Diesel.

Measured quantities are in accordance with the drawing and on the quantity measurement made at the time of inspection.

Please Note that there may be variation of 10% to 20% of volume in measurement.

This report is based entirely on the personal inspection carried out by our Engineer and is issued without any prejudice or favor nor bindings.”

49. Submissions were sought to be canvassed by the learned Counsel for the parties based on the capacity of the tanks in which the seized goods were illicitly concealed. At this stage,

this Court would not be justified in delving into such details, especially having regard to the technical nature of the assessment.

50. Few factors, however, become clearly evident. The assessment of the quantity is based on physical examination of the storage tanks. Inferences are drawn by matching the cross sectional drawing showing the tank capacity and the quantity measurement at the time of inspection. The possibility of variation of 10 to 20% of volume in measurement is adverted to. The certificate is issued without any prejudice or favour and on non-binding basis.

51. The core question before the Court is, can the personal liberty be made to rest on such certificate which was not available before the Customs Officer when the arrest of the petitioner was effected. Incontrovertibly, the said certificate was not taken into account by the Customs Officer to form a reasonable belief that the petitioners had committed the offence punishable under Section 135(1) of the Customs Act in relation to the goods, the market price of which exceeded Rupees One Crore.

52. At this juncture, the decision of the Supreme Court in the case of *Radhika Agarwal* (supra), especially the observations in

paragraph 46 (extracted above), assume importance. In the absence of the quantification of the seized goods and valuation thereof, the Customs Officer could not have formed a reasonable belief that the petitioners had committed the offences which appeared to be non-bailable. The crucial test of satisfaction of the statutory mandate preceding the arrest of the petitioners was thus not fulfilled.

53. In the aforesaid view of the matter, respondent No.1 cannot be permitted to wriggle out of the situation by asserting that the quantification of the seized goods at 120 KL was approximate. The submission that the matter was under investigation and the process of quantification was underway cannot be countenanced after the personal liberty of the petitioners was jeopardized by first effecting the arrest. Nothing prevented the Officer effecting the arrest to have the quantity of the seized goods and value thereof certified before effecting the arrest.

54. The aforesaid factors were not adverted to by the learned Magistrate while holding that the offences appeared to be non-bailable. Resultantly, the impugned order to the extent the learned Magistrate declared the offences to be non-bailable and rejected the prayer for bail deserves to be quashed and set aside.

55. Hence the following order:

: O R D E R :

- (i) The petition stands allowed.
- (ii) The impugned order to the extent the learned Magistrate declared the offences to be non-bailable and rejected the prayer for bail stands quashed and set aside.
- (iii) Shaun Stany Noronha and Sushant Kishor Manna, the petitioners be released on bail in File No.CUS/PTRL/OTH/1/2026-RSR(S)-R and I, on furnishing P.R. bond of Rs.50,000/-, each, with one or more sureties in the like amount.
- (iv) The petitioners shall mark their presence before the Intelligence Officer, RSR R&I, Mumbai, on first Monday of every month between 11.00 a.m. to 1.00 p.m. for the period of one year or till conclusion of the trial, whichever is earlier.
- (v) The petitioners shall furnish their contact details and residential address to the Intelligence Officer, RSR R&I, Mumbai, and shall keep him updated in case there is any change.

(vi) The petitioners shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing the facts to court or any police officer. The petitioners shall not tamper with prosecution evidence.

(vii) The petitioners shall regularly attend the proceedings before the jurisdictional Court.

(viii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and co-assued and the trial Court shall not be influenced by any of the observations made hereinabove.

Rule made absolute in the aforesaid terms.

Petition disposed.

[N. J. JAMADAR, J.]