

Dharmendra Pradipkumar Jagada vs Director Of Revenue Intelligence & on 11 September, 2015

Author: Anant S.Dave

Bench: Anant S. Dave

R/CR.MA/7129/2015

ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION (FOR REGULAR BAIL) NO. 7129 of 2015

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DHARMENDRA PRADIPKUMAR JAGADA....Applicant(s)

Versus

DIRECTOR OF REVENUE INTELLIGENCE & 1....Respondent(s)

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Appearance:

MR D K TRIVEDI, ADVOCATE for the Applicant(s) No. 1

MR DEVANG VYAS, ADVOCATE for the Respondent(s) No. 1

MR HRIDAY BUCH, ADVOCATE for the Respondent(s) No. 1

PUBLIC PROSECUTOR for the Respondent(s) No. 2

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CORAM: HONOURABLE MR.JUSTICE ANANT S. DAVE

Date : 11/09/2015

ORAL ORDER

This third successive bail is preferred by the applicant - original accused under Section 439 of the Code of Criminal Procedure, 1973 in connection with Criminal Complaint No.34 of 2014 bearing Reference No.DRI F.NO.DRI/AZU/INQ □81/2013 registered before the Directorate of Revenue Intelligence, Ahmedabad.

2 It is not in dispute that earlier Criminal Misc. Application No.4490 of 2014 was preferred seeking bail and after perusing the record, on 17.04.2014 following order was passed:

"1 This application is filed under Section 439 of the Code of Criminal Procedure in HC-NIC Page 1 of 10 Created On Tue Sep 15 01:44:09 IST 2015

R/CR.MA/7129/2015 ORDER connection with complaint being DRI F.No.DRI/AZU/INQ □81/2013 registered with the Directorate of Revenue Intelligence, Ahmedabad Zonal Unit on 17.12.2013 for the offence punishable under Section 135 of the Customs Act, 1962.

2 For better appreciation of facts, Arrest Memo dated 17.12.2013 issued by the Intelligence Officer, Directorate of Revenue Intelligence, Zonal Unit, Ahmedabad, is reproduced herewith:

ARREST MEMO I, G.S.Thakur, Intelligence Officer of Directorate of Revenue Intelligence, Ahmedabad Zonal unit, Ahmadabad, in exercise of the provisions of Section 104 of the Customs Act, 1972, is hereby arrest you today on 17th December, 2013, at 19:00 hours at Ahmedabad as there are reasons to believe that you are the person who has committed offence punishable under Section 135 of the Customs Act, 1962, in as much as, you have knowingly involved in the act of smuggling of gold bars and rough diamonds through the Indo□Nepal Land border, You have in this was imported 14 nos of 10 tola Gold bars each of foreign origin valued at Rs.49,51,128/□ [Rupees Forty Nine Lacs Fifty One Thousand one hundred and Twenty Eight Only] [Present market value] and 33 packets of rough diamonds weighing around 10 kgs, Totally valued at Rs.2,12,03,805/□ [Rupees Two Crores Twelve Lacs Three Thousand Eight hundred and Five Only][purchase value]. You have adopted a modus of importing the aforesaid goods into India through Indo Nepal land Border without declaring the same to Indian Customs, You have also concerned yourself in the activity of smuggling rough diamonds into India without the cover of KP Certificate and without declaring the same to India customs, you have thus knowingly concerned yourself in the import of the HC-NIC Page 2 of 10 Created On Tue Sep 15 01:44:09 IST 2015 R/CR.MA/7129/2015 ORDER aforesaid gold and rough diamonds totally valued at Rs.2,61,54,933/□ [Rupees Two Crores Sixty One Lacs Fifty Four Thousand Nine hundred and Thirty Three Only]. By the act of omission and commission on your part, you have indulged in the smuggling of imported goods which you knew or had reasons to believe that the said goods were liable to confiscation under Section 111(d) and (j) of the Customs Act, 1962, The evidences on record clearly establish the offence committed by you in the above case of import of gold and rough diamonds. In view of the above, the goods so imported are to be treated as 'smuggled goods' as and the offence committed by you is punishable under Section 135 of the Customs Act, 1962.

2 In view of the above prosecution case, learned advocate for the applicant would contend that this Court can very well exercise powers under Section 439 of the Code inasmuch

as if tried, punishment prescribed is not more than 7 years. It is further submitted that the applicant raised a dispute about quantity of the contraband seized and valuation carried out by the DRI. Reliance is placed on Notification No.12/2012-Cus. dated 17.03.2012 and amendments therein that the said gold attracts duty @10% ad valorem and in view of fact that out of three passengers, two passengers viz. the applicant and his mother are 'eligible passengers', and therefore, an amount of Rs.2,47,556/- is required to be paid towards duty and further no condition of sections 135 of the Customs Act, 1962 is attracted. It is further submitted that till today no show cause notice is issued calling upon the applicant under the Customs Act, 1962 and action is taken by authority and the applicant is not likely to tamper with the evidence nor in a position to influence the investigation or any witnesses be enlarged on bail. It is further submitted that considering the nature of allegations, role attributed to HC-NIC Page 3 of 10 Created On Tue Sep 15 01:44:09 IST 2015 R/CR.MA/7129/2015 ORDER the applicant, by imposing suitable conditions, the applicant may be enlarged on bail.

3 Learned counsel for the respondent Department submitted that the applicant became the part of conspiracy of smuggling of rough diamonds and gold tola bars in India at the instance of his father. It is further submitted that statement was recorded on 17.12.2013 and the applicant came to be arrested. It is submitted that the total value of the contraband is Rs.2,42,38,700/- which include gold tola bars and rough diamonds. It is further submitted that the above items are prohibited vide notification No.21/2002-D7 dated 26.12.2002 issued by the Directorate General of Foreign Trade [for short, DGFT] and that the applicant is not an innocent person and he is involved in outright smuggling of gold tola bars and rough diamonds, which are liable for confiscation and proceedings are to be undertaken under the Customs Act, 1962 and there is no bar for the Department to file a criminal Case against the applicant. Learned counsel for the Department relying on certain observations and findings of prima facie nature of the Sessions Court, while rejecting the bail application, it is submitted that the application deserves to be rejected.

4 Having heard learned counsels for the parties and on perusal of the record of the case, including the provisions of the Customs Act, 1962 and relevant notifications issued from time to time, I am of the considered opinion that grant or otherwise of bail under Section 439 of the Code is discretionary and in the instant case the applicant is indulged in smuggling of contraband articles

like gold tola bars and rough diamonds and the entire community is aggrieved by such an illegal acts of economic offenders. The said economic offences committed with cool calculation and deliberate design with an eye on personal HC-NIC Page 4 of 10 Created On Tue Sep 15 01:44:09 IST 2015 R/CR.MA/7129/2015 ORDER profit regardless of the consequence of the community and the economy of the country. The events reveal the nature of crime in which the applicant is involved. However, it will be open for the applicant to raise the defence based on the provisions of the Customs Act, 1962 and notifications issued by the respective authorities either under the Customs Act or under any other provisions of the statute. In view of the above, I am not inclined to exercise discretionary power under Section 439 of the Code in favour of the applicant. Further, the learned Sessions Judge has assigned cogent reasons while rejecting the bail application of the applicant and no interference is called for by this Court.

In absence of any merit, this application is rejected.

Rule discharged".

3 As against the above, the applicant approached the Apex Court by filing Special Leave Petition [Cri.] No.5460 of 2014, which came to be withdrawn on 25.07.2014 with a view to enable the applicant to move before the High Court for bail at appropriate stage and accordingly SLP came to be dismissed as withdrawn.

4 Thereafter, the applicant has preferred Criminal Misc. Application No.20506 of 2014 before this Court seeking bail and the following came to be passed on 16.01.2015, which reads as under:

"1. Heard learned advocates for the parties.

2. Upon perusal of order dated 17.04.2014 passed by this Court in Criminal Misc. Application No. 4490 of 2014 and order dated HC-NIC Page 5 of 10 Created On Tue Sep 15 01:44:09 IST 2015 R/CR.MA/7129/2015 ORDER 25.07.2014 passed by the Apex Court in Special Leave to Appeal (Criminal) No. 5460 of 2014 and in view of submissions made by learned counsel for the petitioner and learned standing counsel for the Directorate of Revenue Intelligence, I deem it just and proper to direct the concerned Court to expedite the trial pending so as to complete it within three months from the date of receipt of order of this Court and, in case, if the trial is not completed in above time framed, it will be open for the applicant to approach this Court for relief of bail.

3. Application stands disposed of. Rule is discharged".

5 Learned counsel for the applicant would contend that admittedly trial is not completed as expected by order dated 16.01.2015 and the applicant is languishing in jail since 17.12.2013. It is submitted that the learned Magistrate has recorded evidence of the concerned prosecution witnesses before the pre-charge stage and detailed cross-examination of concerned prosecution witnesses are yet to be made by the defence and the trial is not likely to be concluded in near future. It is further submitted that the applicant has cooperated and not created any hurdle for smooth and expeditious trial except as required under laws to challenge the order passed by the court, which according to the applicant was not in accordance with law or that it would jeopardize the defence. The learned advocate for the applicant further states that period of imprisonment of the applicant as under-trial prisoner is more than 2 years and 8 months, which amounts to pre-trial punishment and availability of the applicant in criminal case can be secured by imposing conditions as the applicant has HC-NIC Page 6 of 10 Created On Tue Sep 15 01:44:09 IST 2015 R / C R . M A / 7 1 2 9 / 2 0 1 5 O R D E R roots in the society and in any manner not likely to commit breach of the condition. It is further submitted that other co-accused are considered for bail and on the ground of parity also the applicant be considered. Learned counsel for the applicant has placed reliance on decisions reported in the cases of [i] Rameshbhai Batubhai Dabhi v. State of Gujarat reported in 2011(3) GLR 1999 and [ii] Abdul Aziz v. Central Excise Department reported in 1975 CRI.LJ. 1713 of learned Single Judge of Madhya Pradesh High Court.

5 As against the above, Mr. Hriday Buch, learned Standing Counsel, appearing for respondent - Directorate of Revenue Intelligence has opposed grant of bail as prayed for on the ground that this court had rejected the bail application by assigning reasons after considering merit of the case and that trial has progressed from time to time, which can be seen from the Rojkam reproduced in affidavit in reply filed on behalf of the respondent No.1. It is also submitted that time and again the applicant has taken recourse to various remedies under law, but delay could solely not to be attributed to the prosecution and when earlier direction has already given to complete the case, in all probabilities, expeditious hearing of the case is not ruled out.

7 Having heard learned advocates for the parties and on perusal of the record of the case, I am of the view that case of the applicant was considered HC-NIC Page 7 of 10 Created On Tue Sep 15 01:44:09 IST 2015 R/CR.MA/7129/2015 ORDER threadbare by earlier order dated 17.04.2014 in Criminal Misc. Application No.4490 of 2014 in which reasons were assigned and bail application was rejected on merit.

Relevant portion of the reply affidavit filed on behalf of respondent No.1 reads as under:

"....Therefore, the scope of the present application would be very limited to the change in circumstances, i.e. delay in conclusion of trial. In this regard, I submit that delay, i.e. occasion in conclusion of trial is attributable to the accused. In fact, the trial has progressed as follows:

[a] On 6.2.2014, after detailed investigation, the complaint is filed and cognizance is taken;

[b] E v i d e n c e o f a l l t h e w i t n e s s e s b e f o r e framing of the charge came to be recorded and thereafter the charge for the offence under section 135(1) of the Customs Act read with section 120B of IPC came to be recorded below Exh.107;

[c] On 13.4.2015, the charge came to be altered below application Exh.112;

[d] All the witnesses have been cross-examined in detail by the advocate accused;

[e] F u r t h e r s t a t e m e n t s o f t h e a c c u s e d p e r s o n s under section 313 came to be recorded;

[f] Arguments of the prosecution as well as the accused persons are over;

[g] T h e p r o s e c u t i o n r a i s e d a p l e a t h a t a specific charge under section 125(1)(b) of the Customs Act was not mentioned in the charge.

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Therefore, the learned Special Public Prosecutor gave an application below Exh.145 for addition of the said sub-clause on 12.8.2015;

[h] The matter was fixed for hearing on 13.8.2015 and after hearing the parties, the learned Magistrate, vide order dated 21.8.2015, added the said sub-clause in the charge in exercise of power under section 216(2) of CrPC;

[I] The advocate on behalf of the present applicant gave an application for adjournment upto 2.9.2015 so that he can file a revision application. The said application given by the advocate for the applicant below Exh.147 came to be granted;

[j] On 2.9.2015, an application has been given to recall as many as 8 witnesses so that the accused can re-examine pursuant to the amended charge. The said application is also fixed for hearing and ultimately allowed by the learned Magistrate.

[k] On 03.09.2015 the advocate accused had filed an application before the trial Court for cross examination of panch witnesses and officers pursuant to amendment in charges. On 04.09.2015 the trial Court had denied further cross examination of the panch witnesses, however, allowed cross examination of the officers. Date for cross examination of the officers was fixed on 07.09.2015.

[l] On 07.09.2015 the advocate accused had filed an application before the trial Court informing the Court that the intends to file revision application against the order dated 21.08.2015 wherein the charge under Section 135(1)(b) of the Customs Act, 1962, was added. The trial Court has fixed 22.09.2015 for filing of revision application....".

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7.1 From the above, it clearly reveals that case is in progress and no unreasonable delay has taken place. The case law relied upon by learned advocate for the applicant has no application to the facts of the present case. Further, there is no change of fact or law or any other circumstance in favour of the applicant and plea of parity cannot be granted in favour of the applicant as it was considered in the facts and circumstances of that application for bail preferred by a female accused and so far as the submission that the applicant is a carrier and deserves discretionary relief of grant of bail is concerned, prima facie I am not convinced inasmuch as the applicant cannot be said to be a carrier, but a prime accused and accordingly I am not inclined to grant bail in favour of the applicant.

With the aforesaid, this application is rejected.

