

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION (STAMP) NO.21291 OF 2022

Dinesh Bhabootmal Salecha

Age 49 years,

(Presently in Arthur Road Jail)

Permanently residing at:

1301, Vastushilp Building,

Gamadia Colony, Tardeo,

Mumbai-400 007.

.... Applicant.

Versus

1. The Directorate of Revenue  
Intelligence, Mumbai Zonal Unit,  
UTI bilding, 13, SVT road,  
Mumbai -400 020.

2. State of Maharashtra

.... Respondents.

...

Dr.Sujay Kantawala, Advocate a/w Advocate Aishwarya Kantawala  
a/w Advocate Yogesh Rohira i/b Advocate Leena Patil for the  
Applicant.

Mr.Advait M.Sethna, Advocate a/w Ms Ruju R.Thakker and Mr.  
Rangan Majmudar for Respondent No.1-DRI.

Mr M.G.Patil, APP for the Respondent No.2-State.

...

CORAM : R. N. LADDHA, J.

DATE : 23 DECEMBER 2022.

**P.C.:**

Heard learned Counsel for the parties.

2. The Applicant, who is presently in judicial custody in R.A.No.1237 of 2022, seeks bail under Section 439 of the Code of Criminal Procedure, 1973.

3. It is the case of the first respondent that the syndicate in which the Applicant has played a major role, imported several consignments of iPhones giving misdeclaration and thereby leading to evasion of customs duty. The Directorate of Revenue Intelligence, Mumbai Zonal Unit, Mumbai, had taken up a detailed investigation into a syndicate involved in smuggling of iPhones. It is alleged that the Applicant systematically misused his AEO status, breached the trust placed on him by the Government and smuggled mobile phones in large numbers into India.

4. Mr Sujay Kantawala, learned Counsel appearing on behalf of the Applicant, submitted that the arresting officer had no legal authority and jurisdiction to arrest the Applicant and that his arrest was in violation of Article 21 of the Constitution of India.

5. It is submitted that a team of four DRI Officers came to the residence of Applicant at about 6.45 a.m. on 2 December 2022 with the intent to arrest him without any order or

permission from the Settlement Commission. It is submitted that on verification of the Document Identification Number (DIN) mentioned on the summons dated 2 December 2022, it is revealed that the same was issued only at 08:09:43 hrs. in DRI, Mumbai Zonal office. It is submitted that, no summons was in existence at about 7.00 hrs. when the Officers came to the residence of the Applicant. He further submitted that the Applicant was apprehended and he remained detained in the custody of the DRI Officers from 6.45 a.m. on 2 December 2022 to his production before the learned Magistrate at about 11.00 a.m. on 3 December 2022. It is submitted that the Applicant was taken from his house at about 9.00 a.m. on 2 December 2022 in the car driven by his son. At that time, the two DRI Officers were also present in the car. One vehicle of DRI was also following them. It is submitted that they all reached the DRI Office, where Applicant's statement was recorded from 9.30 a.m. to 2.14 p.m. It is submitted that the Applicant was not produced before the learned Magistrate within 24 hours from his actual arrest. It is submitted that the Applicant's formal arrest was shown only at 7.45 p.m. on 2 December 2022 by serving a copy of the Arrest Memo.

6. It is submitted that the Arrest Memo is bereft of any material particular to the case. It is submitted that in the Arrest Memo, even the file number in which the Applicant's formal arrest was recorded was not given. It is submitted that neither the

written grounds of arrest were mentioned nor the details of the case in which the arrest is made, were recorded in the Arrest Memo.

7. The learned Counsel for the Applicant made a grievance that on 2 December 2022, the Applicant was not allowed to meet his Advocate, who had visited the office of DRI. His Advocate was not permitted to remain present despite written and oral requests.

8. It is submitted that the Applicant was not allowed to go anywhere unaccompanied by the DRI Officers since he was brought to the office of DRI till recording his formal arrest later. It is submitted that merely because allegations are grave, the constitutional imperatives cannot be overlooked. It is submitted that the show cause notice also contains allegations of smuggling iPhones in more than 130 consignments and that the Applicant, for settlement, seeks immunity from prosecution even in respect of these allegations.

9. Learned Counsel for the Applicant invited the attention of this Court to Section 127-F to contend that where an application made under Section 127-B has been allowed to proceed under Section 127-C, the Settlement Commissioner shall until an order is passed under sub-section (5) of Section 127-C,

have subject to the provisions of sub-section (4) of that section, exclusive jurisdiction to exercise the powers and perform that functions of any Officer of Customs and in the absence of any express directions by the Settlement Commission to the contrary, nothing in the Chapter shall affect the operation of the provisions of the Act insofar as they relate to any matter other than those before the Settlement Commission.

10. The learned Counsel relied on 1) Muskan Exim Inc. Vs. Commissioner of Customs 2019(366)E.L.T. 241 Delhi, 2) Amit Sirohi Vs. Directorate of Revenue Intelligence, 2016 (336) ELT 201 Delhi, 3) State of Punjab Vs. Ajaib Singh & Anr. (1952)2 SCC 421 ; 4) Arnesh Kumar Vs. State of Bihar & Anr. (2014) 8 SCC 273; 5) Directorate of Enforcement Vs. Deepak Mahajan & Anr. (1994)3 SCC 440 Sachin Shantaram Sonawane Vs. State of Maharashtra; 2018 (2) Bombay.C.R.(Cri) 262; Mr Ugochukwu Solomon Ubabuko Vs. Union of India (2022) ALL MR (Cri) 1733; Suaibo Ibow Cassama Vs. Union of India & Anr. 1993 SCC OnLine Bom 254; D.K. Basu Vs. State of W.B. (1997) 1 SCC 416; Sanjay Mukeshbhai Patel Vs. State of Gujrat, R/SCR.A/3089/2022, in support of his contentions.

11. Mr Advait Sethna, learned Counsel for the first Respondent, submitted that the Applicant had voluntarily appeared on being summoned before DRI by coming in a car

driven by his son and that his voluntary statement was recorded from 9.30 a.m. till 2.14 p.m. He submitted that a team of four DRI Officers went to the Applicant's residence at about 7.00 a.m. on 2 December 2022 to serve the summons. The summons was served at 8.30 a.m. and required the Applicant to appear in the DRI office at 10.00 a.m. It is submitted that the allegation by the Applicant that no summons existed at 7.00 a.m. on 2 December 2022 is incorrect. The DRI team was carrying the physical copy of the summons, which does not bear the DIN Number. However, the same was duly authenticated with DIN at 08.09 am on 2 December 2022 by the Officers of the DRI before serving it on the Applicant. It is submitted that Circular No.37/2019 dated 5 November 2019, allowed the Officer to have 15 days to regularise any communication issued without DIN after following the due procedure. It is submitted that the statement of the Applicant got recorded at about 2.14 p.m. on 2 December 2022. It is submitted that the show cause notice was issued concerning two bills of entry filed by the Applicant on 26 November 2021 at Air Cargo Complex, Mumbai. The show cause notice does not cover the past imports by the Applicant. It is submitted that the current investigation is with respect to about 130 bills of entry filed by the Importer from 2 January 2021 to 25 November 2021. It is submitted that the show cause notice for the said period was never issued and that no any application in this regard is pending before the Settlement Commission. It is submitted that the Applicant's

two firms were accredited as Authorised Economy Operators (AEO) by the Central Board of Indirect Taxes and Customs. It is submitted that the son of the Applicant was present with the Applicant throughout the day. It is submitted that the mail written by the daughter of the Applicant has been answered in detail. It is submitted that the Customs Officer under the Act is not a Police Officer within the meaning of Section 25 of the Evidence Act and the statement made before him by a person who is arrested is not covered under Section 25 of the Indian Evidence Act.

12. The learned Counsel for the first Respondent relied on (i) Ankit Ghamshyam Mutha Vs. Union of India and Ors., Writ Petition No.4642 of 2019 decided on 21.1.2020 (Bom); (ii) Gharban Ali Pour Azadi Shekhar Sareoi Vs. Intelligence Officer, Air Intelligence Unit, NIPT, Sahar, Bombay and Anr. In Criminal Application No.3179 of 1995 dated 15.2.1996 (Bom) (iii) Pragyna Singh Thakur Vs. State of Maharashtra, Cri. Appeal No.1845 of 2011 dated 23.09.2011 SC. (iv) Sanjay Mukeshbhai Patel Vs. State of Gujrat, R/Special Cri. Application No.3089 of 2022 dated 13.7.2022 (Guj); (v) Sundeep Kumar Bafna Vs. State of Maharashtra , Cri.Appeal No.689 of 2014 decided on 27.3.2014 (SC). (vi) Commissioner of Customs (Import) Vs. Dinesh Bhabootmal Salecha, Custom Appeal (L) No.20820 of 2022 dated 8.9.2022 (Bom). (vii) Dinesh Bhabootmal Salecha & Ors. Vs. Union of India & Ors., WP (L) No.4965 of 2022 dated

24.2.2022. , (viii) Kowstova Buragohain Vs. The State of Assam & Ors., W.P. (Cri)/ 29 of 2021 dated 10.2.2022 (ix) Ashirwad Enterprises and Ors. Vs. State of Bihar and Anr., Cri. Misc. No.4307 of 1992 dated 26.9.1997 (Patna); x) Amit Bhandari Vs. State of & Ors. Cri.W.P. No.482/2012 dated 2.8.2012(Delhi), x) Vimal Yashwantgiri Goswami Vs. State of Gujrat, R/Special Civil Applicaiton Nos.13679 of 2019 dated 20.10.2020 (Guj) in support of his contentions; (xi) Romesh Chandra Mehta Vs. State of West Bengal, MANU/SC/0282/1968 decided on 18.10.1968 and Criminal Appeal No.1183 of 2002 dated 25.11.2019 in the case of Tejraj Roopchand Doshi Vs. A.D.Petkar & Ors.

13. This Court has perused the copy of the Bail Application, the documents available on record and the affidavits filed on behalf of the parties, brief written submissions and the judgments relied upon by the learned Counsel for the parties and has given anxious consideration to the rival contentions and examined the record with reference to the applicable law.

14. Section 127-F of the Customs Act, 1962 deals with the powers and procedures of the Settlement Commission. Section 127-F of the Customs Act reads as follows:

***127F. Power and procedure of Settlement Commission-***

*(1) In addition to .....*

*(2) Where an application made under section*

*127B has been allowed to be proceeded with under section 127C, the Settlement Commission shall, until an order is passed under sub-section (5) of section 127C, have, subject to the provisions of sub-section(4) of that section, exclusive jurisdiction to exercise the powers and perform the functions of any officer of customs or Central Excise Officer, as the case may, under this Act or in the Central Excise Act, 1944, as the case may be, in relation to the case.*

*(3) In the absence of any express direction by the Settlement Commission to the contrary, nothing in this Chapter shall affect the operation of the provisions of this Act insofar as they relate to any matter other than those before the Settlement Commission.*

*(4) The Settlement Commission shall, .....*

15. The first Respondent contends that exclusive jurisdiction of the Settlement Commission is restricted to two-sized consignments and for past 130 consignments. It is seen that Section 127-F(3) is applicable only in respect of operation of the provisions of the Act “insofar as they relate to any matter other than those before the Settlement Commission.” It is a matter of record that the Applicant seeks immunity from prosecution is sought by the Applicant in respect of allegations levelled in the show cause notice dated 25 May 2022, which also include allegations of misdeclaration in 130 past consignments. It cannot be, therefore, said that prima facie arrest is about any matter other than those before the Settlement Commission. It is admitted fact

that the Settlement was filed after the issuance of the show cause notice. In the instant case, it is not in dispute that a show cause notice issued to the Applicant, as well as a remand application filed for seeking custody of the co-accused, already contained detailed allegations *qua* the Applicant, including past 130 consignments. Learned Counsel for the first respondent could not justify the stated purpose of “to serve summons” by the visit of four DRI Officers in the early hours at 7.00 p.m. when admittedly, the DIN Number printed on the summons was not in existence. It is not even the claim of first respondent as can be seen from the affidavits filed by the authority that the summons was printed at the residence of the Applicant. It is not clear as to why the remand application for the Applicant and that of his co-accused, despite both having allegations regarding past imports had two different file numbers. The Applicant’s daughter has placed on record by e-mail dated 2 December 2022 that four Officers of DRI came to their residence at about 6.45 a.m., and her father was detained and forcibly taken to the DRI office despite his resistance and insistence on permission from Settlement Commission. A representation in this regard was also forwarded to CBIC on 2 December 2022. The learned Counsel for the first respondent also could not give any justifiable response to the query as to why the Applicant was not produced on 2 December 2022, when admittedly, his statement was concluded at 2.14 p.m. The learned Counsel for the DRI could not justify why the Advocate for the

Applicant was not allowed to meet the Applicant. This Court prima facie finds merit in the contention of the learned Counsel for the Applicant that there was an intent to arrest the Applicant since inception on 2 December 2022. Therefore, a team of four officers had not only gone to the Applicant's residence but also brought him to the DRI office with them.

16. Upon perusal of the Arrest Memo, it appears that the same does not contain any particulars of the case in which the Applicant was arrested. It does not contain any file number. No particulars of the offence, save and except stating the penal sections, are forthcoming from the Arrest Memo. The Arrest Memo should contain the gist of the offence alleged to have been committed. The Arrest Memo prima facie appears to be bereft of necessary particulars. The contention of the learned Counsel for the first respondent that in the past, the Applicant has suffered penalty under Customs Act, he was absconding for quite some time, he has been non-cooperative in the investigation, bail had been rejected by the Courts below, cannot justify non-compliance with the Constitutional imperatives and statutory obligations. It is a settled principle of law that the remand order does not cure the violation of Constitutional safeguards even to deny bail.

17. In light of the above, this Court is inclined to grant bail to the applicant. Accordingly, the application is allowed in the

following terms.

**ORDER**

- i) The Applicant Dinesh Bhabootmal Salecha, be released on bail, in RA No.1237 of 2022, on furnishing a P.R.Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand) only with one or two sureties in the like amount to the satisfaction of the concerned Court.
- ii) The Applicant shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses.
- iii) The Applicant shall place on record his detailed address and contact number. If there is any change in the contact number or address, it shall be placed on record before the trial Court.
- iv) The Applicant shall not leave India without permission of the concerned Court.
- v) The Applicant shall cooperate with the investigation and attend the office of the first respondent on every Friday from 11.00 a.m. to 2.00 p.m. initially for a period of 2 months and thereafter as and when required.

18. Needless to say, violation of any of the conditions will make the Applicant liable for cancellation of bail.

19. It is made clear that the observations made herein are prima facie and only for the purpose of deciding the bail application.

20. All parties to act on the authenticated copy of this order.

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