(1992) 05 GUJ CK 0009

In the Gujarat High Court

Case No : Misc. Criminal Application No''s. 1366 and 1482/92

Arvind Narenranath Khungar APPELLANT

Vs

Collector of Central Excise and Customs RESPONDENT

Date of Decision : 29-05-1992

Acts Referred:

Customs Act, 1962 — Section 135
Penal Code, 1860 (IPC) — Section 467, 471

Citation : (1993) 67 ELT 289

Hon'ble Judges : Sharad D. Dave, J

Bench : Single Bench

Judgement

1. This common judgment shall govern the disposal of these two criminal applications, one for obtaining the orders of bail and the below. The

Misc. Criminal Application No. 1366/92 has been filed by the petitioner Arvind N. Khungar who is in the judicial custody for the alleged

commission of the offence punishable u/s 135 of the customs Act, 1962. The Misc. Criminal Application No. 1482/92 has been filed by the

Assistant Collector of Customs, Ahmedabad, for the cancellation of the anticipatory bail orders, Judge, Ahmedabad, in Misc. Crl. Appl. No.

571/92.

2. The Criminal Misc. Application No. 1366/92 was on the Board of this Court (M. S. Parikh, J.) on 7-5-1992 for hearing. The matter was

adjourned but, the liberty was given to the petitioner-accused to file a note for fixing the hearing of the matter during vacation. It is, in this way, that

the Misc. Criminal Application No. 1366/92 comes up for hearing. The Misc. Criminal Application No. 1482/92 is ordered to be heard along with

this bail application.

3. The facts and circumstances under which the present two applications - one for the bail and the other one for the cancellation of the anticipatory

bail orders - arise in the following facts and circumstances :

Arvind Khungar, petitioner in Misc. Crl. Appl. No. 1366/92, works as Clearing Agent of the Customs Department as well as various other parties

who have to stock their goods in the Public Bonded Warehouse at Gandhinagar. The goods which are stored in the abovesaid warehouse at

Gandhinagar were required to be removed from the warehouse only after the clearance of the same by paying the necessary customs duty. The

usual procedure being adopted for the clearance appears to be that the challans are to be filed in quadruplicate and at the time of making payment,

the same are required to be presented before the bank and the bank will keep two challans with them out of which, one will be sent to the pay and

accounts office in Customs Department while the remaining two challans were being handed over to the party, out of which, one will be given to

the warehouse-keeper at the time of the clearance of the goods.

4. On some enquiry, it had come to the notice of the Customs Department that the petitioner-Arvind Khungar who was working as a clearing

agent had adopted a method or modus operandi to clear and transport out the goods from the warehouse by resorting to a special procedure

under which he used to assign different numbers to the challans containing the same amount and on the strength of the said fraudulent challan he

was clearing out the goods of larger quantity than that covered under the challan. It is alleged that petitioner- Arvind Khungar had, in this fashion,

cleared the goods worth about Rs. 60 lakhs under the challans, belonging to M/s. J. Balaji Tubes, M/s. Gujarat Industries Corporation Ltd. and

M/s. Ganpati Textiles and thereby he was able to cause the evasion of the customs duty in sum of Rs. 60 lakhs. The petitioner-Arvind Khungar

was arrested by the Supdt., Central Excise for the alleged commission of the offences punishable u/s 135 of the Customs Act, 1962 and u/s 467

and 471 of the IPC. Petitioner-Arvind Khungar was produced before the ld. Chief Metropolitan Magistrate, Ahmedabad and his bail application

came to be rejected by the orders dated 6th March, 1992. His application for bail before the court of the ld. Addl. Sessions Judge, Ahmedabad,

also came to be rejected by the orders dated 4th April, 1992. It is, under these fact and circumstances, that the Misc. Criminal Application No.

1366/92 has been filed by the petitioner-Arvind Khungar for obtaining the orders of bail.

5. So far as Misc. Criminal Application No. 1482/92 is concerned, the opponent No. 1, S. B. Singh of J. Balaji Tubes Private Limited had

obtained the anticipatory bail orders from the City Sessions Court at Ahmedabad in Misc. Crl. Appl. No. 571/92 because he was apprehending

his arrest for the alleged commission of the offence punishable u/s 135 of the Customs Act, 1962. After hearing both the sides, the Addl. Session

Judge, Ahmedabad, has allowed the application by the orders dated 16th April, 1992. It is because of this reason that the Misc. Crl. Appl. No.

1482 of 1992 has been filed by the Customs Department for the cancellation of the orders.

6. It requires to be noticed at this juncture that one Mr. Udayan Chinubhai who is connected with Ganpati Textiles Ltd., Ahmedabad had filed the

Misc. Crl. Appl. No. 824/92 before this Court for obtaining the orders of anticipatory bail because, he was also apprehending his arrest for the

alleged commission of the offence punishable u/s 135 of the Customs Act, 1962. This Court (Coram : B. C. Patel, J.) after hearing both the sides

and the ld. Additional Public Prosecutor, has granted the said application by the orders dated 26th March, 1992 and the orders in nature of

anticipatory bail have been granted in his favour. The abovesaid orders have become final.

7. Mr. K. B. Anandjiwala, the ld. Advocate who appears for the petitioner in Misc. Crl. Appl. No. 1366/92, has urged that the offence alleged to

have been committed by the petitioner is u/s 135 of the Customs Act, 1962 and u/s 467 and 471 of the IPC and that the petitioner was working

merely as a warehouse agent and that the goods belonged to different institutions or companies, namely, M/s. J. Balaji Tubes. M/s. Gujarat Agro

Industries Corporation Ltd. and M/s. Ganpati Textiles Ltd. and that the abovesaid institutions, organisations or companies have agreed to pay the

customs duty within some time and that as a matter of fact, Ganpati Textiles Limited have made some payment also and that therefore, it cannot be

said that the petitioner-accused is responsible for the evasion of the customs duty. Mr. Anandjiwala has also urged that if this Court has granted anticipatory bail to one of the persons, namely, Udayan Chinubhai, in Misc. Crl. Appl. No. 824/92, there is no reason for not granting the regular

bail to the petitioner-Arvind Khungar. This prayer, made by Mr. Anandjiwala, came to be combated by the ld. Counsel Mr. K. L. Abichandani

who appears for the Customs Department and Mr. D. K. Trivedi ld. PP, on behalf of the State of Gujarat. In their submissions, the present

petitioner appears to be the brain behind the evasion of the customs duty and therefore when he has taken a leading role he cannot be granted bail.

They have also further contended that the offences alleged against the petitioner-Arvind Khungar are very serious in nature and that looking to the

fact that he was playing with the economy of the nation a lenient view cannot be taken regarding his misdeeds. They, therefore, have urged that the

petitions, filed by Arvind Khungar, for orders of bail should be dismissed.

8. So far as Misc. Crl. Appl. No. 1482/92 is concerned, Mr. Abichandani, the ld. Counsel who appears on behalf of the customs authorities, has

urged that the lower Court has erred in granting the orders in nature of anticipatory bail to the accused and that looking to the gravity of the

offences allegedly committed by the said opponent, the orders of anticipatory bail, already granted by the Court below, should be cancelled. The

ld. Advocate Mr. Uraizee who appears on behalf of the opponent no. 1 has contended that after hearing both the sides, the Court below has

granted the anticipatory bail and that this Court has also granted anticipatory bail orders in favour of Mr. Udayan Chinubhai in Misc. Crl. Appl.

No. 824/92 by the orders dated 26-3-1992, and therefore, it would not be justifiable now to set aside the orders granted by the competent court

after hearing both the parties.

9. It requires to be appreciated that the Customs Department have recorded the statements of Mr. Udayan Chinubhai, one Mr. Singh and the

petitioner-Arvind Khungar. These statements would go to show that Arvind Khungar was working as a clearing house agent and that the goods

belonged to various other persons or companies like M/s. Ganapati Textiles or Shri Balaji Tubes Private Limited and that large quantity of goods

was removed out of the bonded warehouse by adopting a special modus operandi under which the petitioner-Arvind Khungar had shown the

same challan which was utilised for the removal of certain goods again to the house-keeper. But, the fact remains that the dutiable goods were

imported into this country under various licences and they cannot be said to be `smuggled goods'' in the strict sense of the word. The parties who

had imported the said goods were not in a position to pay customs duty and to clear the imported goods. Therefore, the goods imported into this

country were required to be stored at the Bonded Warehouse. It appears that the petitioner-Arvind Khungar who has working as a clearing agent

was managing the affairs of the said parties or concerns and that there is definitely a mischief played by petitioner-Arvind Khungar, by which

dutiable goods have been removed from the bonded warehouse without making the necessary payment. But the fact remains that the goods

belonged to other persons and Udayan Chinubhai who represents M/s. Ganpati Textiles Limited has also started to pay the customs duty to the

Customs Department. In the same way, M/s. Balaji Tubes Pvt. Ltd. have also accepted their liability.

10. The important aspect which requires consideration is the fact that Mr. Udayan Chinubhai has been granted anticipatory bail orders by this

Court (Coram : B. C. Patel, J.) by the orders dated 16-3-1992, which, according to the ld. Counsel Mr. Abichandani and the ld. PP, Mr. D. K.

Trivedi, have become final. It is, therefore, clear that the owner of the goods who was required to pay the duty and to remove the goods, has been

granted bail by this Court. The same can be said in respect of S. B. Singh also, who represents M/s. J. Balaji Tubes Pvt. Ltd. because, after

hearing both the sides, the City Sessions Judge, Ahmedabad, has granted the orders in nature of anticipatory bail.

11. Mr. Abichandani is perfectly justified in making a submission before this Court that the offences allegedly committed by the petitioner-Khungar

cannot be said to be trivial offence. According to Mr. Abichandani, petitioner-Khungar had invented a device under which the dutiable goods were

removed. The abovesaid factual aspect of the case can indeed not be disputed. But, at the same time, the fact remains that petitioner-Khungar was

working as a clearing agent and that the other persons have now accepted the liability in respect of the customs duty. It has been stated that Mr.

Udayan Chinubhai has already started to make the payments to the customs department. It is also a fact that according to the ld. Counsel, Mr.

Abichandani, the offences committed by the petitioner-Khungar are punishable u/s 135 of the Customs Act, 1962. According to Mr. Abichandani,

the maximum punishment for the abovesaid acts in the facts and circumstances is of 7 years but that alone would not be a ground to keep the

petitioner- Khungar behind the bars till the trial is over especially when the owners of the goods have been granted anticipatory bail.

12. Mr. Abichandani has urged that it is very likely that if petitioner-Khungar is released on bail, his presence at the time of the trial may not be

secured and he may be able to tamper with the prosecution evidence. But, this apprehension of Mr. Abichandani, the ld. Counsel for the Customs

Department can be taken care of by imposing stringent conditions.

13. Looking to the abovesaid facts and circumstances, the petition, filed by petitioner-Khungar, requires to be allowed and he requires to be

enlarged on appropriate bail with necessary conditions. So far as Misc. Crl. Appl. No. 1482/92 for the cancellation of the anticipatory bail is

concerned, it must be noticed that no cogent ground has been made out by the Customs Department for the cancellation of the anticipatory bail,

granted in favour of the opponent-accused, S. B. Singh. It also requires to be taken into consideration that the orders granted by this Court

(Coram : B. C. Patel, J.) dated 26-3-1992 have become final.

14. Therefore, the Misc. Appl. No. 1366/92 requires to be allowed and the same is hereby, accordingly, allowed. Petitioner-Khungar is hereby

ordered to be released on bail in sum of Rs. 50,000/- and the P. B. of like amount with a further condition that he shall not leave the city and

district of Ahmedabad without having obtained the prior permission of the ld. Metropolitan Magistrate, Ahmedabad, and that he shall report to the

customs department on every Monday during the morning hours till the trial against him is concluded. He shall also cooperate with the customs

department in the investigation.

15. Misc. Crl. Appl. No. 1482/92 fails and the same is hereby dismissed.

