
(1989) 01 DEL CK 0025
In the Delhi High Court

Gursharan Singh

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 01-01-1989

Acts Referred:

Citation : (1989) 01 DEL CK 0025

Hon'ble Judges : Jagdish Chandra, J

Bench : Single Bench

Judgement

Jagdish Chandra, J.—This criminal writ of the petitioner Gursharan Singh son of lata Jagat Singh resident of 2/32-A , Punjab Bagh, New Delhi, at present lodged in Central Jail Tihar, New Delhi is directed against the order of detention dated 19th march,1986 passed by respondent No. 2 Shri M. L. Wadhawan, Additional Secretary to the Government of India, in regard to the petitioner u/s 3(1) of the conservation of foreign Exchange and prevention of smuggling Activities (COFEPOSA) Act, 1974 (as amended up to date) with a view to preventing him from abetting the smuggling of goods, and the petitioner was ordered to be detain and kept in custody Jail, Tihar, New Delhi.

2. The grounds of detention against the petitioner allege that there was an information that a notorious smuggler Rajpal Babu resident of 36, Shastri park, Chander Nagar, Delhi , was a prominent member of an international syndicate of smugglers and was receiving gold biscuits from one Zahid of Dubai via Pakistan as was disposing of the same in the major cities of India. Further information was gathered by the officers of the director of Revenue Intelligence, New Delhi, on 10th March, 1986 to the effect that Rajpal Babu had received smuggled gold biscuits from Indo-Pakistan Border with the assistance of his elder brother Satpal and that the same had been kept at premises BJ-98, Shalimar Bagh, New Delhi, and that those premises were under the control of the petitioner Gursharan Singh, a close associate of Rajpal. These premises were3e searched in pursuance of the said information on 10th march, 1986 and as result thereof 100 gold biscuits or 10 totals each with foreign markings, valued at Rs. 25lakhs and

Indian Currency amounting to Rs. 5,11,500/- besides highly incriminating documents under the customs Act, 1962 were recovered.

3. Thereafter, the residential as well as business premises of the petitioner located at 2/32A, Punjabi Bagh, New Delhi, and M/s G. S. Motors, Shop No. 8,18/3 Western Extension Area, Karol Bagh, New delhi, respectively were also subjected to search by the officers of the Directorate of Revenue Intelligence, New delhi, on the same day i.e. 10th March, 1986 and the search of his residential premises resulted in the recovery of Rs. 40,000/- Indian Currency along with documents, whereas the search of his business premises resulted in the recovery of india Currency amounting to Rs. 1,70,000/-. the aforesaid recovered currency was seized under the Customs Act, 1962.

4. The only contention raised by Mr. Harjinder Singh learned counsel for the detenu during the course of arguments was that when the petitioner was produced before the Advisory Board on 29th April, 1986 from Jail, he submitted before the Advisory Board that he had brought his witnesses viz. Thaneshwar Singh, sunder pal Singh, Pawan Kumar, Balvinder Kumar and Vikram Singh and that they would rebut the allegations made against him in the grounds of detention and metropolis or outside have sold to their respective shops gold ornament or other gold articles which they accepted under the vouchers for which those customers were duly paid the requisite amounts and ultimately those ornament were converted by sending those to the mint and thereafter ultimately. It is alleged that it was very much apprehended that most of the persons mentioned in the said vouchers were actually fictitious so much so that entirely a camouflage was created by giving false names as also false addresses. It is on the basis of this intelligence that was received and after the attachment of certain documents and their examination the Department felt that it was revealed that these vouchers were forged in the sense that fictitious names were mentioned therein ostensibly reflecting a transaction that those persons have sold the ornament and have paid certain amounts and those voucher are nothing but forged documents as valuable security. It was also alleged that under the scheme and mandate of the Gold (Control) Rules and the Act the petitioners were enjoined to follow the certain procedure. Under Rule 3 of the Gold Control rules which is divided into two parts it is stipulated that a certain mandatory procedure is to be followed when a customer offers any ornaments or gold articles in as much as the under current being that his identity should be properly established and for the purposed it is prescribed under the said Rules that certain steps are to be taken by the shop owner such as when a customer is not personally known to the licensed dealer then the payment should be made by the cross-check so that it can be verified. In lieu thereof in the second part it is prescribed that the customer has to establish his identity and for that purpose a further procedure is prescribed inasmuch as the shop owner has to verify the said identity on the basis of the various documents which are illustrated such as passport, Identity-Card, etc. In both these aspects the object obviously is to see that there is no scope for committing any mischief and a genuine transaction is

effected between the parties. It is alleged that both these aspects and are followed inasmuch as the payments were made by bearer cheques and that too only to their own employees which amounts are being siphoned back to them and no steps are made to establish the identity of the customer. the Department then further alleges that these transactions were going on for quite some time and Therefore in order to verify the genuines and truthfulness of these transactions they issued summons to various customers whose names appear on the various vouchers and the addresses reflected therein and they come out with the further allegations that it revealed that no customer was available on those addresses whereas in some cases those were fictitious persons. the Department also feels that there might be some other source and it would take quite some time to collect the necessary clue

5. In some of the matters the petitioners came to be arrested on 30th of October, 1988 while in one matter they were arrested on 14 of September and 21st of September, 1988. They were produced before the learned Additional Chief Metropolitan manifestation ,Esplanade bombay on the 31st of october, 1988 when remand was taken from time to time on 14th of November, 16th of November and it was ultimately extended up to 29th November, 1988.

6. In most of the matters the initial bail application came to be rejected by the learned Magistrate on 2nd of November, 1988 while the review application was also rejected on 16th of November 1988. To be precise and to complete the circuit it may be mentioned that Criminal Appeal No. 986 of 1988 relates to the accused who is a partner in M/s. R. Kishin and Company and his remand application is no. 945 of n1988 and he was also arrested on October 31, 1988. Criminal Application No. 2241 of 1988 relates to Shakti Jewellers wherein the first accused was arrested on 14th of September, 1988 while accused Nos. 2 and 3 were arrested on 21st of September, 1988 and remand application is No. 788 of 1988 and No. 807 of 1988 respectively. In many of the cases the registers came to be attached even in the month of September, 1988 that is much prior to the arrest of the accused persons and those remained with the Department for all this time.

7. The Department obviously opposed the motion for bail on various counts. However, a development occurred before the learned magistrate in view of the contention raised on behalf of the Department that having regard to the provisions of Section 437 of the Code of Criminal Procedure the learned magistrate has no jurisdiction even to entertain the bail application in respect of an offence punishable with imprisonment for life or for a lesser term. It may be observed that apart from the provision contained in the Gold(Control) Act, Certainly provision under the Indian Penal Code share also sough to be made applicable which include Section 467 which include punishable either with imprisonment for life or a term extended up to ten years. It was sought to be contended on behalf of the petitioners that having regard to the terminology used there is no impediment or restriction on the powers of the learned

Magistrate even u/s 437 of the Code of Criminal Procedure more so since none of the offences are punishable with death and more so when at last some of the offences are not exclusively triable by the Court of Sessions and thus if the learned Magistrate can try the offence there is no reason as to why he cannot entertain the prayer for bail. No doubt some arguments were sought to be canvassed before the learned magistrate on merits. However, the record reveals that the dominant part of the argument pertains to the powers of the learned Magistrate u/s 437 of the Code of Criminal Procedure because that was the main objection taken by the Department. The validity of that objection prevailed over the learned Magistrate who opined that he has no jurisdiction even to entertain that application much less to grant bail by reason of the terminology used in Section 437 of the Code. It is pre-dominantly on that count that he rejected all the bail applications though the order reflects only by way of incidental or cursory of mind on the facets of the merits at all.

8. No doubt it was contended on behalf of the petitioners that the construction of Section 437 of the Code as made by the learned Magistrate was not correct. However the petitioners further submitted that when they have now approached this court there is obviously no such impediment which was available on the first forum when the entire field is left open and at large this court can examine the merits apart from deciding the question about the correct interpretation of Section 437 of the Code. The validity of this submission was obviously acceptable since the decision on the provisions of Section 437 of the Code at this stage was more academic as no benefit can be derived by the petitioners. Under the circumstances both the parties agreed to this procedure to be adopted and argued the matter on merits with the net result that the merits which were not exhaustively examined by the learned Magistrate are being examined on this forum.

9. As stated, the pivot of the Department's case relates to the allegations that certain false vouchers were created and manufactured by various petitioners in order to facilitate the commission of the offences under the Gold (Control) Act. To put it in other from it is alleged that even though the gold was received from other sources a camouflage was created through these vouchers that the same was received through the ornaments which were sold by various customers as mentioned in those vouchers. It is thereafter that the Department issued summons to those persons when it was revealed that many of those persons were not residing there. By way of illustration it may be mentioned that the postal endorsements indicate that in respect of 23 persons they were shown to be not know, in respect of three the addresses were incomplete, in respect of one no such address was given while in respect of one that person is supposed to have left the place. This illustration need not be multiplied since it is more or less on the same pattern. When questioned Shri Patwardhan, the learned senior counsel for the Department on instructions submits that essentially on two counts the custody of the petitioners is necessary. The first is that if this involves a conspiracy as suspected by the Department then it would take some time to

collect all the clues and tap various sources and for that purpose it is submitted that this cannot be done unless and until some one from these customers who are purported to have executed those vouchers is actually contacted in flesh and blood and it is only thereafter that the Department would be able to know something. The second count is that the Department apprehends that the petitioners if enlarged on bail may tamper with the evidence and in fact these are the only two counts on which the motion for bail has been opposed.

10. All these submissions are obviously countered by the learned counsel for all the petitioners and according to them in the nature of things it is difficult even to conceive that the petitioners would tamper with the evidence and secondly a feeling generated in the mind of the Department that unless some persons are actually contacted no investigation would be complete would particularly be unending and Therefore on that count it would be futile to keep these petitioners in custody. It is true that at this stage it would not be permissible for this court to embark on a detailed inquiry especially on the finer shades it would not be equally permissible to indulge in any process of appreciation of evidence. The well settled principles governing bail will have to be adhered to.

11. in that behalf it is worth noting that in the remand application given under the signature of the officer of the department it is specifically observed as:

"It is humbly submitted that in Gold control cases an accused is normally not arrested. Even on filing a complaint a summons is asked for. In rare and exceptional cases the Gold control Officers arrest the suspect as such arrest is absolutely necessary."

After having entitled that in the application it is further suggested that this is one of the rare cases where department wants the custody of the petitioners. Obviously, Therefore, the department itself accepts in terms that as a rule in such matters the custody of the accused is not necessary and in fact the officers themselves do not arrest the accused. They are obliged to arrest the accused only in rare cases and Therefore the department would be obliged at least ex-facie to demonstrate before the court that this is one of the rare cases. I am afraid, the department has obviously failed in that exercise and I do not find any reason as to why the normal rule of not arresting the accused should not be adhered to. It is true as rightly submitted by Shri Patwardhan, the learned Senior counsel for the department, that economic offences have heavy dimensions which is bound to affect the entire financial structure of the country as also the stability of the society and as such cases would be viewed with stringency. For that purpose he wanted to rely on several decisions. In my opinion, the proposition and the philosophy enunciated by the learned counsel can hardly be debated, However, even accepting this philosophy in my opinion there are certain landmarks in this case which would justify granting of bail to all the petitioners without causing any injustice or miscarriage of justice and that too without undermining the gravity and seriousness of the allegations. As stated, the department concedes that the normal rule would be that bail should be granted

to such offenders. Further more it is very interesting to note that from the record it indicates that at least in some case about 10 summons were sent on 29th of September 1988, 55 on 221st of October 1988 and some were sent on 31st of October 1988. It may be that summons had to be sent in different phases. As indicated in the catalogue given earlier in many cases the summons have returned with the postal endorsement "un-served" though significantly in some cases the endorsement suggests that it is not as if that the addresses are not staying there but in some cases the addresses are incomplete or the people have left the place though in many cases it is mentioned that those persons are not known. Shri Patwardhan, the learned senior counsel for the department, Therefore, submits that they will be repeatedly sending the summons so as to avoid any complication and they would also be siding officers personally to those addresses for verification and it is at the end of that exercise that they would be able to establish that most of the person are fictitious, That they have a right to issue summons can hardly be be doubted. However, the question is rightly posed by Shri Gurusahani and other learned counsel for the petitioners that if this is a time consuming factor the why the custody of the petitioners is required since that exercise can go on parallel track by the department. The learned counsel for the petitioners also submitted that even the department comes with the a positive allegation that all these persons are fictitious and non existent and further they are confident that they will not be able to contract any such person. If that be so then the question posed is that we here is the occasion or question arises of tampering of such evidence. In other words if the persons are not in existence in flesh and blood even to the knowledge of the petitioners then there is no question of these petitioners trying to tamper with these non existing persons. This submission also cannot be said to be unwarranted.

12. It is matter of record that the registers in this case have attached long back and have been under the microscopic scrutiny of the department right from September 1988. In some cases that was before the arrest of the accused. They had also taken charge of the vouchers and tried to co- relate all the documents. Therefore, if in spite of this margin of time that was available and if no tangible clue qua the said persons and vouchers if available to the department then the repercussions thereof cannot be saddled or imposed on the shoulders of the petitioners by compelling them to remain in custody. It is interesting to note that in one matter at least the learned Magistrate has himself observed as:

"The Department was given sufficient time to complete the investigation. I do not consider that the respondents should be kept in custody for further period."

That reflects the mind of the learned Magistrate who was inclined to grant bail to most of the petitioners. However, he felt restraint on his powers u/s 437 of the Code and it is predominantly on that bail was refused to those petitioners though the learned Magistrate on merits was inclined to do otherwise.

13. In my opinion when the entire record is with the department for quite some time and they had enough and equally sufficient time and opportunity to co-

relate the said documents including the vouchers and to make the inquiries qua the said documents there is no propriety of denying bail to these petitioners since the said inquiry of the department can go on parallel track.

14. Shri. Gurusahani, the learned counsel appearing in one petition, has submitted and which submission is adopted by the other learned counsel, sought to rely on the provisions of Section 100 of the Gold(Control) Act. According to the learned counsel if an inquiry is being held by the Gold Control Officer then such officer should call upon the dealer, refiner or certified goldsmith to establish that he had taken steps specified under this rule in sub-section(1). The learned counsel Therefore submits that it was necessary for the officer to give an opportunity to all these petitioners to demonstrate to their satisfaction that such vouchers were genuine one and the transaction there under was also genuine. Shri. Patwardhan, the learned Senior Counsel for the department, counters that this in the first instance proceeds in the footing that the provisions of rule 3 have been complied with by the petitioners and then only such an opportunity is necessary and in the alternative according to the learned counsel a discretion vests expressly in the said provisions by the yard stick of the word "may" and as such that niceties of these provisions and the thrust of the rival contentions the fact remains that no such opportunity was given to the petitioners to demonstrate and Therefore be hours of these provisions fair play requires that such an opportunity would not have caused any prejudice to the department but on the contrary it would have done immense good to the petitioners so that they could, if possible, demonstrate about the genuineness of the alleged transactions. In my opinion this submission made on behalf of the petitioners cannot be lightly brushed aside. Nothing would have been lost if the petitioners were asked to establish the genuineness of those transactions. On the contrary that would have served the ends of justice more effectively.

15. It was not doubt submitted that this might be an outcome of a conspiracy and the sources of collection of this gold is yet to be tapped or revealed by the department. It is in that behalf significant to note that even upto now except recording the statements of the accused and sending of summons on the addresses as found in the vouchers nothing tangible has been done by the department. When questioned the department could not show any material to substantiate that plea even inferentially, though certainly any detailed material was not expected at this stage. However, if at all there was any progress actually effected then that would have been reflected at least inferentially in all the remand applications which were four to five in number and Therefore it is not open for the department now to submit that some progress is being done. On the contrary the tenor of the argument on behalf of the department tends to suggest that they did all attempts and they are awaiting to find clues only after the addresses are located of those persons as disclosed in the vouchers. The counter question is relevant that if these persons are really in existence then apart from the question as to whether the offence under Gold(Control) Act is formulated or not and even assuming so formulated whether the custody of the petitioners is

necessary for such type of offences, would still confront any one. In my opinion the argument in that behalf advanced by the department is too spacious to be accepted.

16. In view of these features the first grounds relied upon by Shri. Patwardhan, the learned Senior Counsel for the department, in that field is not quite impressive.

17. The department then Therefore falls back on the second count about the apprehension of tampering of evidence. On that count also the allegations are rather vague. As stated, a counter question was posed on behalf of the petitioners that if the persons are really non-existent then there is no question of tampering of such persons so as to forewarn them that they should give statement in the particular manner. In other words there was no scope for the petitioners to influence any one to give statement in particular manner because that person is not in existence according to the department. If the department feels that such person does exist and the petitioners are likely to tamper with the evidence then this is likely to affect the first part of the department's contention that these vouchers are bogus. Even during all this period no tangible material has been unfolded before the Court justifying the apprehension that some one on behalf of the petitioners has tried to tamper with the evidence. It cannot be overlooked that if all there is determination for tampering of evidence then the accused remaining behind the bars would not make any difference. However, the more germane question is as to whether the accused after being enlarged on bail would indulge in any manner to tamper with the prosecution evidence. In some of the remand applications it has not been so firmly reflected about this so-called apprehension. As stated, all the documents are already in possession of the department and thus there is no question of tampering with those documents. Shri. Patwardhan, the learned Senior counsel for the department, submitted that in one case about 22 names find place in the vouchers and they have been luckily traced by the department, and in their case at least the non-genuineness of the transactions is exposed because the statements of those persons revealed that they have not effected any transaction with those firms nor did they sign the documents. It may be so, but on the contrary as rightly submitted by the learned counsel for all the petitioners that this is really a pointer in favor of the petitioners that even though 22 persons have been contacted, they stuck up to the so-try as acceptable by the department and they did not support the defense on any count. In other words there was no process or exercise of tampering with their witness and to say that this may be because the accused were in custody, is hardly convincing. If these persons are really non-existent then it has some repercussion on the first category of the allegation that all the vouchers are pertaining to fictitious and non-existent persons. All these inconsistencies can well be resolved at a later stage. In my opinion, the allegation of tampering in this spacious manner is convincing and the petitioners cannot be detained on that count indefinitely. If after being enlarged on bail the department feels on some rational and tangible material that the petitioners are actually engaging

themselves in such exercise of tampering the evidence then the department would obviously be at liberty to apply on the ground of abusing bail. That liberty is always available to the department and this Therefore takes care of prospective likelihood of such tampering which have no tangible form at this stage.

18. A vague suggestion was made at the Bar on behalf of the department that the petitioners on being enlarged on bail may even try to abscond. This however does not find very strongly reflected in the other part of the application on the lower forum. However, there is no material to substantiate this apprehension nor any definite stand followed in that behalf. It is worth noting that all the petitioners have landed property in this metropolis and have been residing with their families all throughout in this metropolis. they are Income Tax assesseds. Under the circumstances it is difficult to accept that they are likely to abscond.

19. In one out of these petitions some of the petitioners therein have moved the Sessions Court against the first order of the learned Magistrate and the Sessions court declined to grant bail. However, the order of the Sessions Court indicates that bail was declined more or less on the same counts as are now canvassed on behalf of the department. Though a detailed discussion in that files has not been made at all and these facets which are canvassed on behalf of the petitioners were not considered even by the learned Additional Sessions Judge. that order also Therefore does not give assistance one way or the other.

20. when questioned specifically all the learned counsel for the petitioners in all the petitions on instructions make a statement that their clients would be willing to furnish the names and addresses of the employees if any employed in their shops if of course their addresses are known to the petitioners or other partners and in fact at least in one petition names of two such employees are being furnished to the department. This would, Therefore, answer the contention of the department that the identity of the employees is yet to be traced.

21. To say that the offence has been committed and formulated under the Gold (Control) Act and the Indian Penal Code is one thing and to say that the custody of the accused is necessary at this stage for the investigation is another thing. As stated, if the vouchers are found bogus and if the offence is formulated under the relevant provisions of the Gold (Control) Act then certainly the petitioners would face the trial and the department would be entitled to prosecute the petitioners. Assessing the documents and the purported forged vouchers for the purpose of formulating the offence and prosecuting the petitioners will have to be placed on different tracks while considering the application for bail on the basis of the same material. This, Therefore, in my opinion this would be a fit case where notwithstanding the launching a prospective prosecution against the petitioners on the material as it stands or as would be collected, granting of custody of the petitioners would not be justified. Enough time was already granted to the department in that behalf. Under the circumstances a proper case had been made out for granting of bail. I am maintaining that this is without

under mining the submission about the seriousness and gravity of the offence which can hardly be open to any debate. No ratio is required to bolster that submission since it is well founded. however, the consideration would depend on the facts and circumstances of each case. Applying this yardstick to the instant case it cannot be said that no case has been made out for granting of bail.

22. However there department's interest can be protected by imposing conditions. when asked Shri. Patwardhan, the learned Senior Counsel, on instructions submitted that in the first instance the petitioners should be directed to present themselves before the officer of the department every day at least for a reasonable period and secondly they should not leave the limits of this metropolis without the permission and without intimation to the department. Both the conditions as suggested on behalf of the department obviously are reasonable and are absolutely essential in the instant case. Shri. Patwardhan then contended that heavy bail should be imposed. The concept of the bail being heavy depends on the facts of each case. In my opinion, no doubt this submission on behalf of the department on that count also deserves to be accepted though the bail suggested should not be disproportionate and in any event should be in the reach of the petitioners or otherwise by granting of bail by inflicting such stringent quantum of bail is really denied to the petitioners. Considering all the features in my opinion bail in the sum of Rs. 1,00,000/- would serve the ends of justice. All theses conditions as sought for would serve the interest of justice and those also would not cause any prejudice to the petitioners who are agreeable to surrender to those conditions.

23. As indicated at the threshold the learned Magistrate declined to even entertain the bail application pre-dominantly on the ground that he has no jurisdiction u/s 437 or the code of Criminal Procedure since at least the offence u/s 467 of the India Penal code is punishable with imprisonment for life or a term extending up to ten years and for that purpose he relied on a decision of this Court and huge was not inclined to accept the submissions on behalf of the other said that this is not a case where the offence is mad punishable with death or imprisonment of life and they disputed the soundness of that ratio which was relied upon by the learned Magistrate. According to the learned counsel for the petitioners having regard to the scheme of the code and the object behind enacting Section 437 of the Code in the context of other provisions in that chapter the Magistrate would be empowered to entertain bail application if the offence is punished either with imprisonment for life or for any lesser term and it would harmonious reading to construe that it is only in a case that an offence is punishable either with death or imprisonment for life that the jurisdiction of the Magistrate would be snatched away and it is further contended on behalf of the petitioners that significantly the offence u/s 467 of the Indian Penal Code is not exclusively triable by the Court of Sessions. The petitioners, Therefore, contended that it may become necessary to re-consider the said ratio available in the field. The thrust of the contentions raised on behalf of the petitioners in that behalf would not doubt require a serious examination and consideration and

cannot be summarily brushed aside. However, the parties now agree that since the petitioners are being enlarged on bail in the expanded field available on this forum they may not press this point in this proceeding as in the context of these events it may become more academic though they feel that this point deserves to be considered and decided as it confronts the lower Courts more than often. They, Therefore, agree that they would agitate the is point in suitable proceeding at an appropriate stage and as such it may not be necessary to decide this point in this proceeding. In view of this situation that aspect of the controversy touching the magistrate's powers u/s 437 of the Code qua the offence not punishable with death or imprisonment for life or for a lesser term is not being concluded in this proceeding and as such it would not be proper to express any final opinion in that field except indicating that the line of reasoning regarding the construction of Section 437 of the Code as canvassed on behalf of the petitioners would certainly require anxious consideration and the same cannot be lightly brushed aside.

24. Shri. Patwardhan, the learned Senior Counsel for the depart submitted that this ratio should not be construed as a universal application so that it may not be confused that in no case the officers would be entitled to ask for any remain whatsoever. Obviously as is repeatedly indicated this ratio is restricted tot the facts and circumstances of this case and cannot be a proposition of universal application. As to whether any remand period is necessary and justified at all and if so what should be the duration are all questions which cannot be answered in a speculative manner and in vacuum and even the first question posed by Shri. Patwardhan, the learned Senior Counsel for the department, about the necessity of the first remand itself cannot be put in straight jacket divorced from the facts of each case. Both these questions, Therefore, would properly be left to the learned Magistrate concerned who on application of mind to the facts and circumstances of the case would reach a proper conclusion. Restricting to the facts of this case it becomes manifest that already enough time was granted for the department to investigate into the alleged allegations and even the learned Magistrate had indicated at the time of remand that normally he could have released the petitioners on bail but for the constraint which he felt was imposed by virtue of the provisions of section 437 of the code. Therefore, for the reasons already discussed, in the instant case a proper ground has been made out for granting bail to the petitioners. The apprehensions expressed by Shri. Patwardhan, Therefore, are not well founded because those are more speculative than real. It would be proper if no final opinion is expressed in that field as such a speculative exercise would not be permissible. It, however, cannot be under mined that the investigating officers have been thinking on right direction and had a reasonable suspicion at least to have further probe that the gold might have been received by the petitioners in dubious transactions and not through the bona fide customers and if that be so then it would obviously formulate serious dimensions to the entire transactions. The allegations that bogus vouchers are prepared and amounts are encased by their employees and thereby

siphoned back would provide further dimensions and as such mere contravention of the provisions of the said Act and Rules may not be examined in isolation entailing in serious inferences. Prima facie at least the depth, dimensions and seriousness of the allegations cannot be undermined. However, that again is a matter of evidence that would be collected and unfolded at the trial as it would not be proper to express any opinion in that field also so as to cause prejudice to the defense since the entire shades of the controversy are yet not unfolded and the defense would be afforded opportunity to substantiate their case. All the points, Therefore, will have to be left open making it clear that there is no expression of opinion whatsoever on merits and these observations are restricted to this limited field. The learned Magistrate would be entitled to ignore are restricted to this limited field. the learned Magistrate would be entitled to ignore all these observations at the time of final hearing of the case on its own merits in his unfettered discretion.

25. All these three petitions are allowed.

26. all the petitioners in all theses three petitions be enlarged on bail each in the sum of Rs. 1,00,000/- with one surety for the like amount with an option of furnishing two sureties of Rs. 50,000/- each.

27. On being so enlarged on bail each of the petitioners shall abide by the following conditions -

(a) For a period of two weeks commencing from the date of their release on a bill each of them shall present himself before the Gold Control Officer in the office of the department every day between 11- 00 A.M. and 1-00 P.M. After the said period of two weeks is over each of the petitioners shall be enjoined to make himself available before the said officer of the department as and when so required at all reasonable times during the office hours as genuinely wanted for the purpose of investigation of this case.

(b) Each of the petitioners shall not leave the limits of this metropolis for a period of one month from the date of the release. However, in case of emergency requiring his departure from the city, he shall do so with prior permission of the Remand Court with an intimation to the department.

28. The petitioners shall not indulge in any manner to tamper with the evidence.

29. Liberty to the department if bail is abused.