(2016) 08 GUJ CK 0034

In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 19274 of 2016

Kenal Vrajmohan Shah — APPELLANT

Vs

Department of Revenue Intelligence — RESPONDENT

Date of Decision : 12-08-2016

Acts Referred:

Citation : (2016) 341 ELT 37

Hon'ble Judges : Paresh Upadhyay, J.

Bench : Single Bench

Advocate : Shri P.R. Abichandani, Advocate, for the Appellant; S/Shri Kshitij Amin, Additional CGSC for Devang Vyas, ASGI and Ms. Monali Bhatt, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Paresh Upadhyay, J.(Oral) - This is an application for modification of conditions of bail.

2. The applicant is one of the accused in the proceedings pursuant to the inquiry conducted by the Directorate of Revenue Intelligence, Ahmedabad Zonal Unit which is registered as F. No. DRI/AZU/GI-02/ENQ-42(INT-20/2015)2015. It is for the alleged offence under Section 135 of the Customs Act, 1962.

3. The applicant was arrested in connection with the above, on 5-10-2015. He was granted bail by the Additional Sessions Judge, Ahmedabad City vide order dated 20-10-2015 recorded on Criminal Misc. Application No. 3989 of 2015, on certain conditions. Condition Nos. 2, 6 and 9 read as under .

"2. shall not leave territory of India without prior permission of the Court;

6. shall submit his passport before the concerned I.O. within three days from today without fail, if having.

9. has to give his presence in the concerned department on every 9th and 18th of every month between 11.00 a.m. to 2.00 p.m. till the charge sheet is filed."

4. Learned advocate for the applicant has submitted that, the applicant is a senior functionary of an industrial unit and he needs to travel abroad for business purpose frequently. It is further submitted that the applicant has, after his release, traveled abroad more than once, with the permission of the Court below and each time, he has returned in time and has surrendered back his passport. Details in that regard are placed on record. It is submitted that the applicant is not to flee away. It is further submitted that the alleged offence is compoundable and further that the matter is now pending before the Settlement Commission, Customs and Central Excise at Mumbai. Attention of this Court is invited to the communication in that regard dated 20-7-2016 of the said Commission. It is pointed that in view of that, now the Customs Officers will have no jurisdiction over the subject matter. It is further submitted that the tax liability and the amount of penalty which could be imposed is fully secured, since the amount asked for by the department is already paid. It is submitted that under these circumstances, the passport of the applicant be now returned to him. It is further submitted that the condition No. 9 asking the applicant to remain present before the concerned Department every month also be deleted. It is submitted that the applicant had already moved the Court below for this purpose by preferring an application being Criminal Misc. Application No. 647 of 2016. It is submitted that the Court below has, vide order dated 11-3-2016, modified the earlier order only to the extent that the applicant may attend the customs office only once in the month, instead of twice, which was ordered earlier. It is submitted that the order of the Court below dated 11-3-2016 be modified by suitably modifying the earlier order dated 20-10-2015.

5. On the other hand, learned Additional Central Government Standing Counsel has contested this application. However, he states that the fact, that the matter is pending before the Settlement Commission at Mumbai, is right.

6. Learned Additional Public Prosecutor for the State of Gujarat has submitted that the State would have less say in the matter and appropriate order be passed.

7. Having heard learned advocates for the respective parties and having gone through the material on record, this Court finds as under.

7.1 The alleged offence is compoundable.

7.2 The amount asked for by the department is paid with interest.

7.3 Further amount, as directed by the Court below is also lying with the department.

7.4 The matter is now pending before the Settlement Commission, Customs and Central Excise at Mumbai. Communication dated 20-7-2016 of the said Commission, inter alia records that, "...In other words, customs officers will have no jurisdiction over the subject case until an order is passed under sub-section (5) of Section 127C of the Customs Act, 1962 by the Settlement Commission".

7.5 The applicant has, after his release, travelled abroad more than once, with the permission of the Court below and each time he has returned in time and has surrendered back his passport. Details in that regard are also on record.

7.6 In view of above, now no purpose would be served by still continuing the conditions that the applicant shall leave the country only with the permission of the Court, and further that he needs to attend the customs office every month, for the purpose of marking his presence.

7.7 The order of the Court below therefore needs to be modified to the extent that, the applicant shall now onwards not be required to take permission of the Court to travel abroad and further that he need not attend the customs office, only for the purpose of marking presence. This application needs to be allowed to this extent.

8. For the reasons recorded above, the following order is passed.

8.1 This application is allowed.

8.2 The order dated 11-3-2016 passed by the Additional Sessions Judge, Ahmedabad City in Criminal Misc. Application No. 647 of 2016 is quashed and set aside. The said application stands allowed. Resultantly, the order dated 20-10-2015 passed by the Additional Sessions Judge, Ahmedabad City in Criminal Misc. Application No. 3989 of 2015 is modified to the extent that condition Nos. 2, 6 and 9 thereof stand deleted.

8.3 Rule is made absolute. Direct service is permitted.