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**(2011) 01 AHC CK 0028**  
**In the Allahabad High Court**  
**Case No : Criminal Revision No. 245 of 2010**

Makhan Kant Sharma

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

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**Date of Decision :** 10-01-2011

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401, 437(1), 437(3), 438  
Customs Act, 1962 — Section 108, 111, 111(1), 119, 132  
Penal Code, 1860 (IPC) — Section 34, 363, 392, 406, 420

**Citation :** (2011) 61 ACR 2197

**Hon'ble Judges :** Raj Mani Chauhan, J

**Bench :** Single Bench

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## Judgement

Raj Mani Chauhan, J.—Heard the learned Counsel for the revisionist and learned Counsel for the Union of India as well as perused the materials available on record.

2. This criminal revision u/s 397/401 of the Code of Criminal Procedure (hereinafter referred to as "Code") has been filed by the accused-revisionist for modifying the order dated 7.6.2010, passed by the learned Sessions Judge, Lucknow on his bail application Criminal Misc. Case No. 1960 of 2010: Makhan Kant Sharma v. Union of India through the Director of Revenue, Intelligence Gomti Nagar Lucknow, whereby the learned Sessions Judge while allowing his bail application imposed the first condition in addition to other two conditions that the accused-revisionist shall deposit Rs. 4,00,00,000 ( Rs. Four crores) as difference of Custom Duty alleged to have been evaded by him.

3. The relevant facts giving rise to the present revision as borne out from the documents available on record may be summarized as under:

The accused-revisionist Makhan Kant Sharma, son of Parmanand Sharma present resident of R-35. Phase-I. Buddha Vihar, Rohini, Delhi, permanent address-Village and Post Office Raghunathpur, Tehsil Hapur, Police Station Pilkhua, district Ghaziabad, who is detained in Case/Seizure No. 13 of 2010 under Sections 108,

132 and 135(1)(a)(1)(A) and (B) of the Customs Act, 1962, from Police Station D.R.I., Gomti Nagar, Lucknow, was proprietor of a Firm named and styled as M/s. Maa Shakti Industries. Surajpur situated in Greater N.O.I.D.A. Initially it was a factory of bath-rooms fittings etc. and later on, the factory was closed in the month of September, 2007. However, the accused had already applied for import and export licence, i.e. I.E.C. and D.G.F.T. Consequently, he was granted I.E.C. No. 0507030397 in the name of his firm M/s. Maa Shakti Industries, B-4/166, Yamuna Vihar, Delhi. The accused-revisionist after closure of his factory got employed in a private concern run by one Gajraj Singh Baid (co-accused) and Rajesh Kumar Gupta alias Raj Bihari. Gajraj Singh Baid put a proposal before him that he as well as one Rajesh Kumar Gupta alias Raj Bihari wanted to use the name of his firm for importing and exporting the goods. The accused-revisionist accepted his proposal and he lent the name of his factory to Gajraj Singh Baid and Rajesh Kumar Gupta alias Raj Bihari for importing and exporting the goods.

The prosecution case is that four containers having imported branded and unbranded shoes reached at I.C.D., Agra with bill of entry and the bill of lading which belonged to M/s. Maa Shakti Industries, Surajpur, N.O.I.D.A. The containers were to be cleared on 4.2.2010 by the Deputy Commissioner, Incharge, I.C.D., Agra. In the meantime, the Additional Director General and Additional Director, D.R.I. (Directorate of Revenue Intelligence), Lucknow received an information that the above four containers were having mis-declaration and mis-classification of the goods in the import documents; rather these containers were containing valuable goods for which no custom duty had been paid. Consequently, they informed the Deputy Director Incharge, I.C.D., Agra to detain the containers till further instructions. In the meantime, the proprietor of M/s. Maa Shakti Industries, Makhan Kant Sharma and other concerned persons, i.e., Gajraj Singh Baid and Rajesh Kumar Gupta alias Raj Bihari were traced out and they were issued summons to appear before LCD., Agra for inspection of the goods stuffed in the above four containers, but none of them turned up to the office of LCD., Agra within the time allowed by the officers of D.R.I. Consequently, D.R.I. officers, Lucknow Zone visited LCD., Agra and resumed the original file of the bill of entry relating to the four containers. Since neither the proprietor of the firm nor two others, namely, Gajraj Singh Baid and Rajesh Kumar Gupta alias Raj Bihari turned up for inspection of the goods stuffed in the containers, therefore, officers of the D.R.I., Lucknow Zone in the presence of the two independent witnesses, representatives of CONCOR, representative of Shipping Line, Customs Officers of LCD., Agra and D.R.I. Officers got opened the containers and checked articles kept therein from 16.3.2010 to 20.3.2010. They found that the containers contained mobile batteries, cigarettes and stickers of mobile batteries in huge quantity in addition to shoes. Mobile batteries, cigarettes and stickers of mobile batteries were not declared in the import documents; rather the articles were misdeclared as well as less-declared. The articles which were not declared in the import documents were liable to be confiscated u/s 111(f), 111(1), 111(m) and 119 of the Customs Act, 1962.

Consequently, D.R.I, officers seized the articles which were valued about? 29,70,10,750. The D.R.I. Officers in presence of witnesses and other officers of the different departments as mentioned above prepared a seizure memo (panchnama) on the spot. It was assessed by D.R.I. Officers that the Importer had evaded the custom duty to the tune of? 4 crores.

4. The accused revisionist in compliance to the summon issued by D.R.I. Officers, appeared before them on 12.4.2010 and his statement was recorded by the D.R.I. Officers. He confessed that the valuable articles were imported by Gajraj Singh Baid and Rajesh Kumar Gupta alias Raj Bihari in the name of his firm "Maa Shakti Industries" which were not declared in the import documents. The accused revisionist was arrested for committing offences under Sections 108, 132, 135(a)(1)(A) and (B) of the Customs Act. He was produced before the Special Judicial Magistrate, Custom, Lucknow and was remanded to the judicial custody. The accused revisionist moved bail application before the learned Special Chief Judicial Magistrate, Lucknow which was rejected by him. Thereafter, he moved bail application before the learned Sessions Judge, Lucknow. The learned Sessions Judge allowed his bail application imposing the following conditions:

1. "The accused-Applicant Makhan Kant Sharma shall deposit Rs. 4,00,00,000 ( Rs. four crore) as difference of Custom Duty alleged by the prosecution.
2. The accused Makhan Kant Sharma shall furnish a personal bond of Rs. five lacs ( Rs. 5,00,000) and two sureties each of the like amount to the satisfaction of the Magistrate concerned.
3. The accused-Applicant shall surrender his passport and shall give undertaking that he will not leave the country without prior permission of the trial Magistrate and also co-operate with the investigating agency during investigation.

The accused-revisionist being aggrieved by the first condition imposed by the learned Sessions Judge has filed the present revision.

The opposite party has filed objection/counter-affidavit sworn by Anil Kumar Pandey, Intelligence Officer, D.R.I., Zonal Unit, Lucknow opposing the revision.

5. The submission of the learned Counsel for the accused-revisionist is that the Court while releasing the accused on bail may in view of the facts of the case and the nature of the offences impose certain conditions as provided under Sections 437(3) and 438(2) of the Code as the case may but if the Court finds that the accused deserves to be released on bail then it cannot impose any such onerous condition which cannot be complied with by the accused. Such condition will amount to denial of bail. In this case, the learned Sessions Judge after going through the facts and circumstances of the case found that it was a fit case for bail. He, therefore, allowed the bail application filed by the accused-revisionist and directed him to file personal bond of Rs. five lacs with two sureties each in the like amount to the satisfaction of Magistrate concerned. This was a heavy

amount which itself was sufficient to ensure the attendance of the accused-revisionist before the Court whenever he is called upon by the Court to appear before it. In this case, the learned Sessions Judge has imposed first condition that the accused-revisionist will deposit an amount of Rs. four crores as difference of Custom Duty. This condition could not be imposed by the learned Sessions Judge. If the learned Sessions Judge found that it was a fit case for bail, he could not impose such condition which could not be complied with by the accused-revisionist. The first condition imposed by the learned Sessions Judge amounts to denial of bail which is contrary to the order allowing the bail application of the accused-revisionist. Learned Counsel for the accused-revisionist submits that the imported articles are under seizure of D.R.I., Lucknow for confiscation. The estimated value of the imported articles as per seizure memo is Rs. 29,70,10,750.00. The custom duty can be realized by the D.R.I. Officer confiscating the seized articles. Moreover the offences alleged to have been committed by the accused are compoundable. The accused-revisionist is not the real exporter of seized articles; rather those articles were exported by Gaj Raj Singh Baid and Rajesh Kumar Gupta. In view of the facts of the case the first condition imposed by the learned Sessions Judge is illegal and is liable to be quashed. The learned Counsel in support of his arguments has placed reliance on cases *Moti Ram and Others Vs. State of Madhya Pradesh*, *Keshab Narayan Banerjee and Another Vs. The State of Bihar*, *Olga Kozireva v. Department of Customs*, (2002) 10 SCC 373; *Munish Bhasin and Ors. v. State Govt. of N.C.T. of Delhi* and Anr. 2009 (2) JIC 92 : 2009 (3) ACR 2807 (SC) , decided by the Hon''ble Apex Court and *Kaleem alias Kaleem Pasha Vs. State*, decided by the Karnataka High Court and *Vipin Mehra and Anr. v. State* 2004 Cri LJ NOC 41 (Del) and *M.R. Narayanan Vs. State*, decided by the Delhi High Court and *Abdul Gaffar v. State of U.P. and Ors.* 1999 (2) JIC 80 (All) : 1999 (3) ACR 2511, decided by the Allahabad High Court.

6. Learned Counsel for the opposite party vehemently opposed the revision and argued that the Court while granting bail to the accused can impose any condition which it thinks proper. The accused-revisionist was found involved in evading the custom duty to the tune of Rs. four crores which is very huge amount. The learned Sessions Judge with a view to protect the financial interest of State has imposed the condition No. 1 while allowing the bail application of the accused-revisionist that he shall deposit Rs. four crores which was assessed as custom duty on the undeclared goods. Such condition could be imposed by the Court which is not illegal. The revision has, therefore, got no force and is liable to be dismissed. The learned Counsel in support of his arguments has placed reliance on case *M.M. Cooperative Bank Ltd. Vs. J.P. Bhimani and Another*, decided by the Hon''ble Apex Court.

7. I have given active consideration to the rival submissions advanced by the learned Counsel for the parties as well as gone through the case laws cited by them.

8. Section 437(3) of the Code provides that the Court while releasing an accused on bail may impose certain conditions as mentioned therein. Likewise, Section 438(2) of the Code also provides certain conditions which the High Court can impose while granting anticipatory bail to an accused. Section 437(3) and Section 438(2) of the Code are being extracted herebelow:

437 (3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code (45 of 1860) or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail under Sub-section (1) the Court shall impose the conditions,--

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter;

(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected; and

(c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

and may also impose, in the interests of justice, such other conditions as it considers necessary.

438 (2) When the High Court or the Court of Session makes a direction under Sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including--

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) Such other condition as may be imposed under Sub-section (3) of Section 437, as if the bail were granted under that section.

From a perusal of the provision u/s 437(3) of the Code, it appears that the Court while allowing the bail application of an accused can impose certain conditions as mentioned therein. It can also impose any other condition as it considers necessary in the interest of justice.

9. Now in view of the provision u/s 437(3) of the Code as well as the law laid

down by the Hon''ble Apex Court and the High Courts in above cited cases, the question that crops up for consideration is that:

Whether the learned Sessions Judge, Lucknow while allowing the bail application of the accused could impose the impugned condition No. 1 as referred hereinabove?

10. In the case of *Moti Ram and Ors. v. State of Madhya Pradesh* (supra), the accused filed SLP before the Hon''ble Apex Court against his conviction. He prayed for bail during pendency of appeal. The Hon''ble Apex Court ordered him to be released on bail on his filing of personal bond with surety to the satisfaction of the Magistrate concerned. He moved an application before the concerned Magistrate to release him on bail in view of the order passed by Hon''ble Apex Court. The learned Magistrate allowed his application and ordered him to file a surety in a sum of Rs. 10,000 belonging to his own district. The accused could not manage for the independent surety as amount was too heavy. He filed surety bond of his own brother which was not accepted by the learned Magistrate. The accused, therefore, had to approach the Hon''ble Apex Court again for releasing him on his own bond. The Hon''ble Apex Court found that the learned Magistrate had actually frustrated the order of bail granted by the Court. The Hon''ble Court held that the accused can be released on bail on executing his own bond without surety. The amount of the bond fixed by the learned Magistrate was too heavy which frustrated the order of bail. Consequently, the Hon''ble Apex Court ordered the accused to be released on bail during pendency of appeal on filing his personal bond of Rs. 10,000.

11. In the case of *Keshab Narayan Banerjee and Anr. v. State of Bihar* (supra), the accused moved an application for bail before the High Court which was allowed by the High Court directing the accused to furnish security of Rs. one lac in cash or in the form of fixed deposit of any nationalized bank in Bihar with two sureties residing in the State of Bihar each for a like amount. The accused was unable to deposit the amount as per order of the Court. He approached the Hon''ble Apex Court by filing SLP against the condition imposed by the High Court while allowing his bail application. The Hon''ble Apex Court granted leave and allowed the appeal setting aside the condition imposed by the High Court for furnishing the security of Rs. one lac either in cash or in form of fixed deposit of any nationalized bank. The Hon''ble Court held that imposing of such condition will amount to denial of bail itself. The Hon''ble Apex Court, therefore, enlarged the accused on bail on his furnishing a personal bond of Rs. 25,000 and two sureties each for the like amount to the satisfaction of learned Special Judge. The relevant observation of Hon''ble Apex Court finds place in para 2 of the judgment which is being extracted herebelow:

...The condition imposed by the High Court for enlarging Keshab Narayan Banerjee, Appellant No. 1 on bail, namely, that he should furnish security for rupees one lakh in cash or in fixed deposit of any nationalised bank in Bihar with two sureties residing in the State of Bihar each for a like amount appears to be

excessively onerous. In the circumstances of this case, it virtually amounts to denial of bail itself. It is, therefore, ordered that Appellant No. 1 shall be enlarged on bail on his furnishing a bail bond for Rs. 25,000 with two sureties each for the like amount to the satisfaction of the learned Special Judge.

12. In the case of Olga Kozireva v. Department of Customs (supra), the accused was arrested on 20.8.2000 for the offences punishable under Sections 132 and 135 of the Customs Act, 1962. She was remanded to the judicial custody. Her bail applications had been rejected by the learned Magistrate and learned Sessions Judge. She moved bail application before the High Court which was allowed by the High Court imposing so many conditions; one of the condition was that she would execute a personal bond of Rs. six lacs with two sureties. The accused being a foreign poor lady could not arrange the sureties of heavy amount. She had already spent two years in jail. She approached the Hon''ble Apex Court to be released on bail. The Hon''ble Apex Court in view of the facts and circumstances of the case held that the order of High Court directing the accused to file bail bond for a sum of Rs. six lacs was unjust. The Hon''ble Court allowing her bail application ordered the accused to file personal bond of Rs. 10,000 with one surety in the like amount to the satisfaction of trial court. The Hon''ble Court also imposed other conditions that she would give her residential address and would remain present on the day of posting of the case by the trial court. She would also report to the Court concerned every Monday.

13. In the case of Kalcem alias Kaleem Pasha v. State by Central Police Station Bangalore (supra), the Petitioner and others were accused in a Case Crime No. 65 of 2002 for the offences under Sections 363 and 392 I.P.C. They after their arrest moved bail application before the learned Magistrate which was allowed by the learned Magistrate imposing the following conditions:

1. Accused Nos. 1-5 are released on bail on each of them furnishing personal bond of a sum of Rs. 50,000 and two sureties each.
2. Accused Nos. 1-5 shall deposit a sum of Rs. 10,000 each within one month from the day of release.
3. Accused Nos. 1-5 shall mark their attendance before Central Police Station, for 3 months or till laying of the charge-sheet whichever is earlier, every Sunday in between 10-12 a.m.
4. Accused Nos. 1-5 shall not leave the jurisdiction of Bangalore City or Bangalore Rural until charge-sheet is filed.
5. Accused Nos. 1-5 shall not threaten/temper the complainant or complainant witnesses.

The accused challenged the condition No. 2 imposed by the learned Magistrate before the High Court on the ground that such condition could not be imposed, as such it was illegal and it amounted to miscarriage of justice. The High Court keeping in view the law laid down by Hon''ble Apex Court in Moti Ram v. State of

Madhya Pradesh (supra) held that the condition No. 2 imposed by the Court will amount denial of bail and such condition could not be imposed. The High Court, therefore, held that the condition No. 2 imposed by the learned Magistrate while releasing the accused on bail was illegal and was liable to be quashed.

14. In the case of Vipin Mehra and Anr. v. State (supra), the trial court while allowing the bail application of the accused ordered them to furnish bank guarantee of Rs. 10 lacs. The High Court found that such condition was arbitrary. The High Court held that once the Court comes to the conclusion on the facts and circumstances of the case that a person is entitled to the benefit of bail then no condition other than those enumerated in Section 437(3) or 438(2) of the Code can be imposed. Imposition of such a condition is not only beyond the purview of the provisions of the Code but also beyond the powers of the Court. The relevant observation of the Hon''ble Court is being extracted herebelow:

Once the Court comes to the conclusion on the facts and circumstances of the case that a person is entitled to the benefit of bail then no condition other than those enumerated in Section 437(3) or 438(2) can be imposed. Imposition of such a condition is not only beyond the purview of the provisions of Code of Criminal Procedure but also beyond the powers of the Court. Discretion does not mean that it has arena or boundary. No Court having howsoever absolute power can traverse beyond the arena carved out for it. Even absolute discretion does not admit element of arbitrariness or whimsicality or capriciousness. The impugned order granting bail subject to the condition directing Petitioner to furnish bank guarantee of Rs. 10 lacs is not sustainable in the eyes of law and has to go to the extent of imposition of a condition of furnishing a bank guarantee. If the trial court was so doubtful or uncertain about the attendance of the Petitioner it was well within its jurisdiction to refuse the bail.

15. In the case of Munish Bhasin and Ors. v. State Govt. of N.C.T. of Delhi and Anr. (supra), the accused was wanted in a case under Sections 498A, 406 and 34, I.P.C. He moved anticipatory bail application before the Delhi High Court. The Delhi High Court allowed the application on the conditions that the accused will pay maintenance allowance to his wife and child @ Rs. 12,500 per month. It was also ordered that the accused will deposit the arrears of maintenance allowance @? 12,500 from August, 2005 to the date of order amounting to Rs. 3 lacs within six months. The accused challenged the above conditions imposed by the High Court before the Hon''ble Apex Court. The Hon''ble Apex Court held that such conditions are not contemplated u/s 438(2) of the Code. Therefore, no such conditions could be imposed. The Hon''ble Court also held that normally the conditions that can be imposed while granting the bail to the accused are: (i) to secure the presence of the accused before the Investigating Officer or before the Court, (ii) to prevent him from fleeing the course of justice, (iii) to prevent him from tampering with the evidence or to prevent him from inducing or intimidating the witnesses so as to dissuade them from disclosing the facts before the police or Court or (iv) restricting the movements of the accused in a

particular area or locality or to maintain law and order etc. To subject an accused to any other conditions would be beyond jurisdiction of the power conferred on Court u/s 438 of the Code. The Hon''ble Apex Court further held that the Court while releasing the accused on bail can impose the conditions as enumerated under Sections 437(3) and 438(2) of the Code but not beyond those conditions. If the Court imposes the conditions other than the conditions those enumerated under Sections 437(3) and 438(2) of the Code, it will be beyond the powers of the Court. The relevant observation of the Hon''ble Apex Court finds place in para 8 of the judgment which is being extracted herebelow:

It is well-settled that while exercising discretion to release an accused u/s 438 of the Code neither the High Court nor the Sessions Court would be justified in imposing freakish conditions. There is no manner of doubt that the Court having regard to the facts and circumstances of the case can impose necessary, just and efficacious conditions while enlarging an accused on bail u/s 438 of the Code. However, the accused cannot be subjected to any irrelevant condition at all. The conditions which can be imposed by the Court while granting anticipatory bail are enumerated in Sub-section (2) of Section 438 and Sub-section (3) of Section 437 of the Code. Normally, conditions can be imposed (i) to secure the presence of the accused before the Investigating Officer or before the Court, (ii) to prevent him from fleeing the course of justice, (iii) to prevent him from tampering with the evidence or to prevent him from inducing or intimidating the witnesses so as to dissuade them from disclosing the facts before the police or Court or (iv) restricting the movements of the accused in a particular area or locality or to maintain law and order etc. To subject an accused to any other conditions would be beyond jurisdiction of the power conferred on Court u/s 438 of the Code. While imposing conditions on an accused who approaches the Court u/s 438 of the Code, the Court should be extremely chary in imposing conditions and should not transgress its jurisdiction or power by imposing the conditions which are not called for at all. There is no manner of doubt that the conditions to be imposed u/s 438 of the Code cannot be harsh, onerous or excessive so as to frustrate the very object of grant of anticipatory bail u/s 438 of the Code.

In view of the law laid down by Hon''ble Apex Court, it is clear that the Court while releasing the accused on bail can impose any condition but that condition cannot be so harsh, onerous, excessive or unjust which will amount to frustrate the very purpose of granting bail.

16. In the case of Abdul Gaffar v. State of U.P. and Ors. (supra), the accused was ordered to be released on bail by the learned Sessions Judge on execution of personal bond of Rs. 30,000 with two sureties each in the like amount to the satisfaction of the Magistrate concerned. He was further directed to furnish bank guarantee of Rs. 30,000. The accused was unable to furnish bank guarantee of Rs. 30,000. He approached before this Court. It was held by this Court that the Court can impose the conditions while allowing the bail application. Those conditions are enumerated in Section 437(3) of the Code. No conditions other

than those enumerated u/s 437(3) and 438(2) of the Code can be imposed by the Court while releasing the accused on bail.

17. In the case of *M.R. Narayanan v. State* (supra), the Delhi High Court has held that the Court while allowing bail application of the accused can impose certain conditions but those conditions should not be unreasonable or unjust. In offences under Sections 420 and 406, I.P.C. the Court cannot proceed to recover the amount which is subject-matter of the complaint as the condition for grant of bail.

18. In the case of *M.M. Cooperative Bank Limited v. J.P. Bhimani and Anr.* (supra), it was a case of financial scam involving huge amount of crores of rupees. The accused was arrested by the Investigating Officer. He moved bail application before the High Court. The learned Counsel for the accused expressed his willingness that the accused will make payment of Rs. 23.84 lacs in instalments. The High Court allowed the bail application imposing the number of conditions which are being extracted herebelow:

(a) The Applicant shall file an undertaking on the lines of the statement made by the learned advocate Mr. Lakhani before this Court within one week from the date of his release and shall abide by the said undertaking;

(b) The Applicant shall surrender his passport, if he is holding it, to the Court;

(c) The Applicant shall not influence the witnesses or tamper with any documents;

(d) The Applicant shall remain present and mark his presence at the Prevention of Economic Offences Cell. C.I.D. (Crime), Gandhinagar Zone Police Station, on every second Sunday of even number English Calendar month between 9 a.m. to 2 p.m.;

(e) At the time of execution of the bonds, the Applicant shall furnish his address to the Investigating Officer and the Court concerned and shall not change his residence till the final disposal of the case or till further orders in that regard;

(f) The Applicant shall not leave the limits of India without the prior permission of this Court;

(g) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(h) The Applicant shall not do any act prejudicial to the interest of the prosecution;

(i) The Applicant shall deposit an amount of Rs. 50 lakhs with M.M.C.B. within a period of one week from the date of his release, as already stated by him ;

(j) The aforesaid amounts are ordered to be deposited without prejudice to the rights of the parties and the same shall be subject to the final outcome in the lavad suit (s); and

(k) The Applicant shall abide by the above conditions scrupulously and in case of violation of any other conditions, the complainant Bank would be at liberty to move this Court for cancellation of bail.

The Co-operative Bank challenged the order passed by the High Court on the ground that the scam involved huge amount of Rs. 107 crores. The amount to be deposited by the accused as per order of the High Court was too meagre. The Hon"ble Court keeping in view the undertaking given by the learned Counsel for the accused did not interfere in the order passed by the High Court and dismissed the appeal. In this case, whatever conditions for depositing the amount was imposed by the High Court it was imposed on the willingness of the counsel for the accused who on the instruction received from the accused had given his willingness to deposit the amount. In the circumstances, the Hon"ble Court did not find it proper to interfere in the order passed by the High Court.

19. After going through the law laid down by the Hon"ble Apex Court and the High Courts in the above cited cases, it is well-settled that the Court while granting bail to an accused can impose certain conditions enumerated u/s 437(3) (a) to (c) of the Code but that conditions cannot be unreasonable, unjust, arbitrary and onerous. If the Court finds that the accused may be enlarged on bail, it cannot impose any such condition beyond Sections 437(3) or 438(2) of the Code which is too harsh to be complied with by the accused. Such condition will amount to denial of bail.

20. In this case, the learned Sessions Judge while allowing the bail application of the accused, has imposed the first condition as follows:

The accused-Applicant Makhan Kant Sharma shall deposit Rs. 4,00.00,000 ( Rs. four crores) as difference of Custom Duty alleged by the prosecution.

21. The accused is facing criminal prosecution under Sections 108, 132 and 135(1)(a)(1)(A)(B) of the Customs Act for evading custom duty on the goods. The goods imported in the name of his firm "M/s. Maa Shakti Industries" is under seizure of D.R.I. The custom duty which is payable on undeclared imported goods cannot be realized imposing any condition while releasing the accused on bail as the same can be realized by a separate proceeding under the Customs Act. The condition No. 1 imposed by the learned Sessions Judge appears to be harsh which amounts to denial of bail, therefore, the learned Sessions Judge, Lucknow could not impose condition No. 1 while allowing the bail application of the accused, which is liable to be quashed and the revision deserves to be allowed.

22. The criminal revision is therefore allowed. The impugned order dated 7.6.2010, passed by the learned Sessions Judge, Lucknow is modified to the extent that the condition No. 1 shall be deleted.