

(1988) 11 BOM CK 0012

In the Bombay High Court

Case No : Criminal Application No. 2245 of 1988

Moosa Hyder and Others

APPELLANT

Vs

Assistant Collector of Customs and Another

RESPONDENT

Date of Decision : 24-11-1988

Acts Referred:

Customs Act, 1962 — Section 108

Citation : (1989) 24 ECC 133

Hon'ble Judges : V.S. Kotwal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.S. Kotwal, J.—Heard Shri S.M.Gupte, the learned Counsel for the petitioners and Shri C.T.George, the learned Senior Counsel for the Customs Department as also Shri M.R.Suryawanshi, the learned Public Prosecutor for the State.

2. Perused the relevant papers which are produced by the Investigating Officer who is present in Court.

3. The event occurred on October 30, 1988 when the Officers of the Air Intelligence Unit of the Bombay Airport Customs Collectorate intercepted about ten Omani Nationals on their arrival from Mascot by Gulf Air Flight. By that time, they had cleared themselves through Customs in the Green Channel giving "Nil" declaration. Each of them was individually questioned before the independent witnesses as to whether they were carrying any contraband articles or gold and the answer was in the emphatic negative. However, the said Customs Officers had their own suspicion which proved to be fully justified and the personal search of those persons was effected in the presence of independent persons. Each of them was surprisingly carrying certain gold bars of foreign markings total being 109 gold bars totally weighing 12,709.40 grams valued at Rs. 24,27,495-40 ps. in the International Market and Rs. 40,67,008.00 at the local market. They had obviously used certain camouflage in the mailer of carrying those articles

inasmuch as some had kept it either in the chapels or in the specially stitched pockets, in the caps which were worn by them. They [were] also found carrying undeclared valuable goods in their baggage's .It may be observed at this juncture that the material discloses that all the baggage's had been pulled up together and thus all had association with each other. The split up of the finding of gold on the person of each of those ten people has been specifically mentioned in the remand application as also in the petition and therefore need not be re-stated. Thus for instance some were having 19 gold bars in the maximum while the minimum were having six gold bars.

4. All those articles were seized under panchanama in the reasonable belief that they were smuggled in India and thus were liable for confiscation under the provisions of the Customs Act. Under the observance of procedural formalities their statements came to be recorded u/s 108 of the Customs Act wherein each of them individually accepted that he has brought gold though individually for the purpose of sale in the Indian Market in the confident hope to derive more profit since it fetches more price in the local market than compared to other countries and for that purpose they had made this trip to Bombay. They were obviously placed under arrest on the same day.

5. They were produced before the learned Additional Chief Metropolitan Magistrate on 31st and were remanded upto 14th of November, 1988. They have now been further remanded upto 25th of November, 1988. Prayer for bail was obviously rejected.

6. It is now in the next round of litigation that the identical prayer of bail is made on behalf of the petitioners.

7. Shri Gupte, the learned Counsel for the petitioners, mainly contended that apart from all other deficiencies in the procedure the fact remains that this cannot be said to be a case of conspiracy since even the statement of each of the accused u/s 108 of the Customs Act does not even inferentially spell out any conspiracy since each of them was making trip for Bombay for the sale of gold for the first time though all of them admit that they had been to this metropolis on some prior occasion though not for the sale of gold. The learned Counsel therefore submits that this is a case of individual person carrying gold individually on their personal responsibility and merely because they all came in a group and pulled up their baggage's together is no ground to spell out any conspiracy. According to him, therefore, they coming together does not carry with it any sinister implication. According to him, no tangible investigation has been done for so much time and in fact no further investigation is required at all and it would take still further time before the trial commences. It was submitted that the petitioners may be advised to plead guilty and it is their anxiety to lead guilty then it should be done early and for that purpose it was suggested that the Court should direct the Department to file complaint early.

8. All these contentions were countered by Shri George, the learned Senior

Counsel for the Department. According to him, even though the statements of these accused may indicate that they had visited this city on the prior occasions not for the purpose of sale, still some important links in the entire episode are yet to be traced. It is submitted that the manner in which these persons came together carrying this contraband coupled with the fact that all of them have visited this metropolis on prior occasion do spell out a conspiracy. It is submitted that they being foreigners having no roots in India are very much likely to abscond the moment the bail is granted and the Department has also to examine several other angles because on the ramification of a conspiracy which normally extends its roots at different places. It is submitted that apparently it is a serious offence and even in the matter of grant of bail certain features cannot be overlooked including the apprehension of the Department that the petitioners on getting enlarged on bail are likely to tamper with the evidence and the witnesses who might be stationed in Bombay.

9. It is true that insofar as the statements are concerned, though they admit their prior visits to this city there is no clear admission as such that in all those previous visits they had brought any gold. Each has given his individual purpose for the visit though according to the Department even that purpose will have to be examined and assessed since the Department feels that that itself is a camouflage because on the previous occasion also they must have brought the contraband, and sold in this city market. This submission cannot be said to be unjustified though no opinion can be expressed firmly in that except saying that this requires investigation to tackle that angle. All of them came together in a group. All of them hail from the same place. All of them had pulled up their baggage's and significantly each of them denied the possession of contraband very emphatically when questioned by the Customs Officers and lastly each of them had used a shrewd camouflage by concealing the gold bars which has already been discussed. It is also a matter of record as disclosed by the Collectorate of Customs that practically that all of them were staying in the said hotel in Grant Road Area in this metropolis on their previous visits. Shri George, the learned Senior Counsel for the Department, submits on instructions that certain intelligent clues have been so far collected by the Customs Officers which include finding of certain telephone numbers in the city of Bombay and if tappe properly it would throw a flood of light on the deep roots of this conspiracy and even the Department would be able to reach those persons who purchased such gold bars in the local market because it is only on account of the assistance of the purchasers that there is encouragement to bring gold in the country. This submission is fully supported by the affidavit filed by one Shri P.Meena who is Intelligence Officer of said Customs Department posted at Sahar Air Port. The said affidavit does make out at least a prima facie case that some crucial investigation is required to be done and if the petitioners are enlarged on bail it would obviously hamper the same but since the petitioners had visited this city on some prior occasions and had resided in certain hotel obviously some aspect will have to be investigated into so as to collect formidable clues which may

change the complexion of the entire situation. In my opinion the affidavit does make out a proper case that some more time for investigation is absolutely essential in the nature and fitness of things.

11. As stated, it was also submitted on behalf of the petitioners that they may be advised to plead guilty in which event it would be better if they are given an opportunity to do so early as possible and for which purpose it would be desirable if the complaint is lodged early. That necessity of lodging complaint in all such cases early can hardly be doubted. However, according to Shri George, the learned Senior Counsel, that by seeking such directions and filing of the complaint, the petitioners' anxiety is obviously to see that no further time is given to the Department for completing the investigation and this cannot be encouraged as per the learned Senior Counsel. This submission cannot be lightly brushed aside. It is however submitted further that in these days the complaints in all such matters are filed as early as possible and in this case also the Department will endeavour to follow the same pattern since the petitioners are in custody and they are Foreign Nationals. This would answer the points raised and the anxiety expressed by the petitioners.

12. It is also apprehended with some justification that the petitioners who are Foreign Nationals have no roots in this city or this country and therefore the moment they obtain their liberty they are very much likely to abscond and once they do so the entire exercise of collecting clues and investigating all the features would practically become nullity insofar as nabbing of the culprits is concerned. Shri George, the learned Senior Counsel for the Department, submits which equal justification that the experience in this field qua the Foreign Nationals is not quite happy though on the contrary the experience for reaching a reasonable and justifiable conclusion reinforcing the apprehension of the Department is that in many of such cases of Foreign Nationals the abscondence after getting enlarged on bail has become a normal routine whereas it is only an exception that the abscondence is absent.

13. About 109 gold bars were found worth several lakhs of rupees and those were obviously being smuggled in the country and such activities for obvious reasons almost paralyse the economic structure of the country and also affects the entire stability of the society.

14. In my opinion, considering all these features no case for bail has been made out whatsoever in favour of any of the petitioners and the entire petition deserves to be rejected wholesale.

15. The observations herein above are restricted to this application for bail and should not be confused as a final expression of opinion on any count. All aspects are left open for the learned presiding Judge to decide on merits in his unfettered discretion which he shall do fully ignoring all these observations at that stage. This will also not affect the discretion of the learned Magistrate while considering the application for remand if made by the Department or any other

prayer if made by the petitioners.

16. Petition rejected.

17. Bail refused to all the petitioners.