(2016) 05 GUJ CK 0018

In the Gujarat High Court

Case No : Criminal Misc. Application (For Anticipatory Bail) No. 9811 of 2016

Rajesh Ramjibhai Kundariya APPELLANT

Vs

State of Gujarat RESPONDENT

Date of Decision : 05-05-2016

Acts Referred:

Citation : (2016) 339 ELT 361

Hon'ble Judges : Sonia Gokani, J.

Bench : Single Bench

Advocate : S/Shri Deven Parikh, SC with Chetan K. Pandya, Advocate, for the Appellants; S/Shri Hriday Buch, Advocate and Rutvij Oza, Add. Public Prosecutor, for the Respondents

Final Decision : Disposed Off

Judgement

Sonia Gokani, J. (Oral)—RULE. The formal service of notice of Rule is waived by the learned counsel appearing for the respective respondent. The Rule is fixed forthwith on consent.

2. By way of present application under Section 438 of the Code of Criminal Procedure, 1973, the applicants have prayed for enlarging them on anticipatory bail in the event of their arrest in connection with File No. DGCEI/AZU/12(4)144/2015-16, registered with Directorate General of Central Excise Intelligence, Ahmedabad Zonal Unit, Ahmedabad.

3. On March 15, 2016, as per the submission of the applicants, the officers of the respondent No. 2 entered the factory premises and conducted search under the Central Excise Act, 1944 (hereinafter referred to as ''the Act''). Even at the residence of the applicant No. 1, the search was carried out and the panchnama to that effect was drawn. A spot summons came to be issued on March 16, 2016 under Section 14 of the Act upon the applicant No. 2 and the spot summons were also issued upon some of the officers of the Company to remain present. A request was made by the applicants to differ the proceedings. It is the say of the

applicants that their company is one of the top twenty companies of Wankaner and is complying with all the provisions of law, including the provisions of the Act. The company is in the production of ceramic tiles. Wherever any product requires showing maximum retail price under the Legal Metrology Act, 2009 or Rules framed thereunder, the Excise duty is to be paid under Section 4A of the Act. The retail sale price is also to be determined in accordance with the Rules. If any manufacturer removes the goods at the price other than the retail sale price or otherwise, then the Excise duty is to be ascertained as provided under sub-Rule (I) and (II) of Rule 4 of the Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules, 2008 (hereinafter referred to as ''the Rules'').

4. It is the case of the applicants that neither the company has sold the tiles at the price higher than the Maximum Retail Price nor has received any cash from the dealer towards the sale price of the tiles. Thus, in absence of any receipt of difference of Maximum Retail Price and the product sold at more than the Maximum Retail Price, no case could be made out against the applicants.

5. According to the applicants, the offence punishable under Section 9 of the Act is cognisable, non-bailable and punishable with imprisonment for a term which may extend to seven years and with fine if the duty leviable on the goods under the Act exceeds Rs. 1 crore, otherwise the offence is non-cognisable, bailable and punishable with imprisonment which may extend to three years.

6. The respondent No. 2 has powers to arrest under Section 13 of the Act. Apprehending the arrest, the applicants approached the Sessions Court at Ahmedabad for anticipatory bail by way of Criminal Miscellaneous Application No. 1284 of 2016. The Sessions Court rejected the same vide order dated April 19, 2016 and, therefore, the present application.

7. It is urged that the maximum punishment prescribed under the said offence is of seven years. The alleged offence is only on account of non-payment or short payment of Excise duty by the company. It is the case of the prosecution that the applicants issued the Central Excise invoices by declaring less MRP and tiles are sold to the ultimate customers at the actual MRP, which is much higher than the MRP declared by the company in invoices as well as in their books of account. The differential value of tiles, over and above the invoice value, was being collected from the buyers in cash through the brokers.

8. It has been enumerated in the affidavit-in-reply by the prosecution that there is clandestine removal of goods by the manufacturer. Evasion of Excise duty is approximately of Rs. 2,01,06,434/- by the company.

9. Both the sides have been heard at length. Shri Deven Parikh, learned Senior Counsel, appearing with Shri Chetan Pandya, learned counsel appearing for the applicants, has fervently made his submissions and also relied upon the decisions of the Division of this Court in the case of Commissioner of Central Excise & Customs v. Suzlon Ceramic, reported in 2012 (282) E.L.T. 338 (Guj.).

10. Shri Hriday Buch, learned Standing Counsel appearing for the respondent No. 2, has also pointed out to the Court as to how the investigation revealed the evasion of Central Excise duty. According to him, further investigation is going on.

11. In rejoinder, Shri Deven Parikh, learned Senior Counsel, on instructions, submitted that the applicants are ready and willing to pay 50% of the Central Excise duty reserving all their rights to contend at an appropriate time in accordance with law to such proposal. He has also submitted that there is no dispute nor any objection qua the ongoing investigation.

12. Shri Hriday Buch, learned Standing Counsel, does not have any objection to such a proposal being accepted by the Court.

13. Having considered the submissions advanced by both the sides and the proposal put forth by the learned Senior Counsel as also the material on record, especially when the learned Standing Counsel has no objection to such proposal, this Court is of the opinion that such proposal deserves to be accepted on certain stringent conditions.

14. In view of aforesaid, the applicants are ordered to be released on anticipatory bail in the event of their arrest in connection with File No. DGCEI/ AZU/12(4) 144/2015-16 registered with Directorate General of Central Excise Intelligence, Ahmedabad Zonal Unit, Ahmedabad, on each of them furnishing a solvent surety of Rs. 25,000/- (Rupees Twenty Five Thousand only) and a surety of the like amount with the concerned trial Court and on the following conditions :

(i) The applicants shall deposit 50% amount of central excise duty demanded i.e. the amount of Rs. 50,00,000/- (Rupees Fifty Lakh only) (rounded off) within a period of 15 days (fortnight) from the date of receipt of a copy of this order with the concerned trial Court;

(ii) Such amount be paid by way of two Post Dated Cheques, one of June, 2016 and another of July, 2016, each for Rs. 25,00,000/- (Rupees Twenty Five Lakh only);

(iii) The applicants shall cooperate with the ongoing investigation and make themselves available for interrogation whenever required;

(iv) 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 them from disclosing such facts to the Court or to any officer;

(v) shall not obstruct or hamper the investigation and not to play mischief with the evidence collected or yet to be collected by the concerned officer;

(vi) shall at the time of execution of bond, furnish their address to the concerned Officer and the trial Court concerned; and shall not change their residence till the final disposal of the case or till further orders;

(vii) shall not leave India without prior permission of this Court and, if having passports shall surrender the same before the concerned trial Court within a week from the date of receipt of a copy of the order;

15. Despite this order, it would be open for the concerned authority to file an application for remand of the applicants before the competent Court, if he thinks it just and proper; and the competent Court shall decide such application for remand on merits. The applicants shall remain present before the concerned Court on the first date of hearing of such application and on all subsequent occasions, as may be directed by the concerned Court.

16. At the trial, the trial Court shall not be influenced by the prima facie observations made by this Court in this order while enlarging the applicants on bail.

17. It is clarified that the aforesaid deposit of amount of Rs. 50,00,000/- by the applicants shall be without prejudice to their rights and contentions of challenging the same before the concerned authority.

18. Bail before the trial Court having jurisdiction to try the case.

19. The present application is disposed of accordingly. Rule is made absolute to the aforesaid extent.

20. Direct service is permitted.

