

**HIGH COURT OF MADHYA PRADESH, JABALPUR**

**BENCH AT INDORE**

**S.B.: Hon'ble Shri Justice Subodh Abhyankar**

**Miscellaneous Criminal Case No.53810/2020**

(Hitesh Nagwani s/o Vijay Kumar Nagwani  
Sanjay s/o Ramchandra Panjabi

**Versus**

Directorate of Revenue Intelligence (DRI)  
Indore Zone, Indore MP)

\* \* \* \* \*

Mr. V.S. Negi, learned Senior Counsel along with Mr. Rajeev Kumar Jain, learned counsel for the applicants.

Mr. Chandan Airen, learned counsel for the respondent.

\* \* \* \* \*

**ORDER**

(Passed on this 8<sup>th</sup> day of February, 2021)

This is the applicants' first application under Section 439 of Criminal Procedure Code, 1973. They are implicated in connection with Crime No.93/2019 registered at Police Station Directorate of Revenue Intelligence (DRI) Indore Zone, Indore District Indore (MP) for offence punishable under Sections 132 and 135 of Customs Act, 1962 (herein after referred to as the Act) and also under Sections 467, 471 and 120-B of Indian Penal Code, 1860 (IPC).

The applicants are in custody since 16.12.2020.

2. In brief, facts of the case are that the applicants herein are running their business of import through their proprietary firm M/s. Rudra Overseas, Indore (MP), having applicant No.2 Sanjay s/o Ramchandra Panjabi as its proprietor. It is not disputed that the firm is registered by Food Safety and Standard Authority of India as also Goods and Service Tax (GST). The petitioners are engaged in the business of importing nutri-

tion supplements. It is alleged against them that the applicants were found to be involved wide scale duty evasion by undervaluing invoices of the goods, which were imported by them and for this purpose, a dummy firm M/s. Rax Trading Limited, Hong Kong was also formed by them with applicant No.2 Sanjay Panjabi being its sole Director. During the search in the premises of the applicants, it was found that an unaccounted sum of Rs.82,67,900/- plus 5,000 US\$ were seized from applicant No.1 Hitesh Nagwani where from the possession of applicant No.2 certain incriminating documents were seized. Statements of the accused persons were also recorded under Section 108 of the Act wherein they have also admitted to have committed the aforesaid offence by undervaluing the invoices and evading duty.

3. Senior Counsel appearing for the applicants Mr. V.S. Negi has vehemently argued before this Court by submitting that the applicants have been falsely implicated in the present case, as they have already deposited a sum of Rs.7,53,643/- with the respondent. It is further submitted that offence as alleged against the the applicants are bailable under Section 104 read with Section 135 of the Act, as the alleged value even as per the department's claim is Rs.86,22,912/- and actual customs duty minus Integrated Goods Service Tax (IGST), according to the Department is Rs.37,94,083/-. Thus, the value of the goods being less than Rs.1,00,00,000/- (rupees one crore) and duty involved is less than

Rs.50,00,000/- (rupees fifty lakh), the alleged offence is bailable.

4. Senior Counsel has also relied upon various decisions of other High Courts to buttress his arguments. It is further submitted that even otherwise, the investigation is over and the applicants have already been sent to judicial custody; and as such, no further recover or discovery is to be made at the instance of the applicants. Thus, it is submitted that the applicants be released on bail, as even show cause notice under the provisions of the Act has also been issued to the applicants.

5. Counsel for the respondent / DRI Mr. Chandan Airen, on the other hand, opposed the prayer and it is submitted that no case for grant of bail is made out, as both the applicants are habitual offenders, as against them a of duty evasion has also been registered by DRI, Hyderabad Zone, Hyderabad (Telangana State). It is further submitted that actual value of goods imported by undervaluation on the basis of using fabricated invoices is Rs.11,93,03,316/- (rupees eleven crore ninety three lakh three thousand three hundred sixteen) whereas customs duty valued is around Rs.7,22,00,000/- (rupees seven crore twenty two lakh) and the value of miss-declared goods amounts to Rs.1,07,29,025/- (rupees one crore seven lakh twenty nine thousand twenty five). Thus, it is submitted that the applicants are not entitled to get benefit of Sections 104 and 135 of the Act. It is further submitted that charge sheet is yet to be filed. Apart

from that, an unaccounted sum of money to the tune Rs.82,67,900/- plus 5,000 US\$ have also been recovered at the instance of the applicants. It is further submitted that despite specific order dated 17<sup>th</sup> February, 2020 passed by this Court in Writ Petition No.2315/2020, the applicants have not cooperated with the Department (DRI) and they never complied with the statutory summons issued by the Investigating Agency. Thus, it is submitted that on these counts, the applicants are not entitled to be released on bail.

6. It is further submitted that one Uttam of Delhi (an accused person) has facilitated *Hawala* Transaction on the accused persons is still at large and if the applicants are released on bail, the accused would certainly receive information from the applicants and would be prejudicial to the prosecution.

7. Counsel has further submitted that the applicants have very systematically undervalued the goods, where were imported by them; and thus, a *prima facie* case for evasion of duty and forgery is made out. Hence, it is submitted that the application be dismissed.

8. Learned Senior Counsel has also submitted that since the case involves alleged evasion of duty of more than Rs.50,00,000/- (rupees fifty lakhs), it is bailable under Section 104 of the Act. It is further submitted that arrest has also been made in violation of the various circulars issued by the Government of India, Ministry of Finance (Department of Revenue) and reliance has also

been placed on a circular No.28/2015 dated 23.10.2015 issued by the Central Board of Excise & Customs, New Delhi to submit that the case of the accused is not covered under Clause (a) to (e) of Para 2 of the said circular. It is further submitted that only because the applicants had approached this Court three times for the provisional release of goods and seized currency, hence as a counterblast, they have been arrested and since the applicants have already been sent to the judicial custody, the allegation of non-cooperation by them is also cannot be accepted. It is further submitted that applicant Hitesh Nagwani s/o Vijay Kumar Nagwani has also explained the recovery of currency form his house and as such, mere recovery of currency does not constitute an offence. It is further submitted that so far as valuation of goods is concerned, the same is still to be adjudicated by the concerned Adjudicating Authority of the Customs Department; and thus, the disputed question of law cannot be decided at this stage. Further it is submitted that otherwise also, the case is based on documentary evidence only and no purpose would be served to keep the applicants in jail.

9. Reliance has also been placed by the counsel for the applicants on the following decisions: -

1. **Vijay Sajnani v. Union of India** reported as **2017 (345) E.L.T. 323 (SC)**;
2. **Deepak Agrawal v. State of Gujarat** reported as **2019 (366) E.L.T. 621 (Guj.)**;

3. **Govind Gopal Goyal v. State of Gujarat** reported as **2018 (360) E.L.T. 434 (Guj.)**;
4. **Bajrang Lal Sharma v. State of Gujarat** reported as **2017 (354) E.L.T. 582 (Guj.)**;
5. **Sita Ram Aggarwal v. Customs** reported as **2005 (188) E.L.T. 478 (Del.)**;
6. **Arvind Kumar Jain Dhakad v. Union of India** reported as **2019 (367) E.L.T. 785 (Bom.)**;
7. **Union of India v. Kisan Ratan Singh** reported as **2020 (372) E.L.T. 714 (Bom.)**; and
8. **Inder Setia v. U Central Excise Department, Noida** reported as **2008 (224) E.L.T. 385 (All.)**.
10. Heard counsel for the parties and perused the record.
11. From the record, it appears that the allegations of evasion of huge amount of customs duty have been levelled against the applicants, as according to the respondent, actual value of goods imported by undervaluation on the basis of using fabricated invoices is Rs.11,93,03,316/- (rupees eleven crore ninety three lakh three thousand three hundred sixteen) and the value of miss-declared goods is around Rs.1,07,29,025/- (rupees one crore seven lakh twenty nine thousand twenty five) whereas the quantum of customs duty is Rs.7,22,00,000/- (rupees seven crore twenty two lakh). Thus, this Court is of the considered opinion that since the charge is yet to be filed and one of the accused persons namely Uttam is still at large, it would not be appro-

priate for this Court to release the applicant at this stage of investigation. The decisions cited by the Sr. Counsel are distinguishable on facts and have no application under the present facts and circumstances of the case. As the offences alleged under IPC are also non-compoundable.

12. In view of the same, this Court is of the considered opinion that at this stage, no case for grant of bail is made out. However, the applicants are at liberty to renew their prayer after the charge sheet is filed.

14. Accordingly, Miscellaneous Criminal Case No.53810/2020 stands dismissed.

sd/-

**(Subodh Abhyankar)**  
**Judge**