

IN THE COURT OF SESSION FOR GREATER BOMBAY

**Bail Application No-2797 Of 2019
(CNR-MHCC02-017002-2019)**

**MR KAVINKUMAR CHANDRESH MEHTA
AGE -24 YEARS, OCCUPATION- STUDENT RESIDING AT 301
ANAND LAXMI, PRARTHNA SAMAJ ROAD, VILEPARLE (EAST)
MUMBAI-400057**

Vs

**AIR CUSTOM OFFICER
AIR INTELLIGENCE UNIT
CHHATRAPATI SHIVAJI MAHARAJ INTERNATIONAL AIRPORT
MUMBAI-400099
RA NO.249/2019
F.NO.SD/INT/AIU/311/2019 AP 'A'**

D S Deshmukh, J

Dated: November 15, 2019

Appellant Rep by: Mr Sujay Kantawala, Adv.

Respondent Rep by: SPP Ms Anuradha Mane

Cus - Bail application has been filed u/s 439 of Cr.P.C - case is that on 16.10.2019, officers of AIU on the basis of profiling intercepted applicant Kavinkumar Chandresh Mehta, Student, aged 24 years, who had arrived from Bangkok by Thai Smile Flight - personal search resulted in recovery of Wrist Watch - Astronomia Solar Zodiac of brand Jacob & Co. allegedly valued at Rs.1,84,07,500/- - said watch was seized under panchanama alleging that the Wrist Watch was imported by evasion of duty in contravention of provisions of Customs Act and other Allied Acts - alleging offence u/s 135 of the Act, a case was registered and the applicant was arrested and he is in judicial custody - applicant has approached the Sessions Court on the ground of innocence and false implication and seeks bail - AIU objected the application on the grounds that investigation is in progress; that the wrist watch value is above one crore rupees i.e. Rs.2,71,89,000/- and that the applicant had visited Bangkok four times for what purpose and for whom he has brought the watch, enquiry is yet to be done and if he is released on bail he would tamper with the evidence.

Held: It is alleged that the Wrist watch is worth Rs.2,71,89,000/-; that it has been brought without declaring the same and thus evading Customs duty chargeable on the same; that, therefore, he has been arrested for the offences punishable u/s 135 of the Customs Act - a reading of section 135 indicates that any person, in relation to any goods in any way mainly concerned in any fraudulent evasion or attempt at the evasion of any duty chargeable thereunder shall be punished with imprisonment for a term which may extent to seven years and fine in the case of offence relating to any goods whose market price exceeds one crore - applicant has filed receipt of seized watch and from which it appears that the value is US \$13,895.00 i.e. below Rs.10 lakhs - AIU has not filed any documentary evidence about the value of Wrist watch except alleging that

it is valued at Rs.2,71,89,000/- - Prima facie, receipt discloses that the value of watch is below Rs.10 lakhs and as per the provision of s.135 of the Customs Act, 1962 if the value of goods imported by evading tax is below Rs.1 crore, the offence punishable is bailable - As the applicant is in judicial custody since 16.10.2019, there is no need to keep the applicant behind bars - apprehension of the AIU that if the applicant is released on bail, he may tamper with evidence, can be resolved by imposing stringent conditions - Applicant is, therefore, released on bail on his executing personal bond of Rs.50,000/- with one or two solvent sureties of like amount; that he attends AIU office at CSMI Airport, Mumbai on every Monday between 11.00 am to 2.00 pm till the completion of investigation; that he shall make himself available for interrogation as and when required; that the applicant shall not leave India without prior permission of the Trial Court and the applicant surrenders his passport with AIU officer: Sessions Court

Bail granted

JUDGEMENT

Per: D S Deshmukh:

1. This is an application for bail under section 439 of Cr.P.C. The AIU Office has registered offence punishable u/s.135 (1)(a), 135 (1)(b) and 135 (1) (A) r/w. 104 of the Customs Act 1962 against the applicant.
2. The prosecution (AIU) has filed reply Ex.2 and contested the application.
3. Heard learned advocate Mr. Sujay Kantawala for the applicant and learned SPP Ms. Anuradha Mane for the AIU_ learned advocate Mr. Sujay Kantawala for the applicant relied on following Citations:-
 - a) *Bajrang Lal Sharma V/s. State of Gujarat (2017 (354) ELT 582 (Guj.)*
 - b) *Dataram Singh V/s. State of Uttar Pradesh and another ((2018) 3 Supreme Court Cases 22)*
 - c) *P. Chidambaram V/s. Central Bureau of Investigation (2019 SCC On Line SC 1380)*
 - d) *D.K. Shivakumar V/s. Directorate of Enforcement (2019 SCC Online Del 10691)*
4. In short, the AIU case is that on 16.10.2019, officers of Air Intelligence Unit, CSMI Airport on the basis of profiling, intercepted applicant holding Indian Passport No. L 6030571 who had arrived from Bangkok by Thai Smile Flight WE- 335 dated 15.10.2019. The personal search of the applicant resulted in the recovery of Wrist Watch "Astronomia Solar Zodiac" of brand Jacob and Co. valued at Rs. 1,84.07, 500/, The said watch was seized under panchnama. The said wrist watch has been imported by evasion of duty in contravention of the provisions of Customs Act, 1962 and other allied acts. Therefore, offence u/s 135(1) (a), 135 (1)(b) and 135 (1) (A) of the Customs Act 1962 has been registered against the applicant. He is arrested. Now he is in JC.
5. Applicant Approached this Court on the grounds of innocence and false implication. According to him, his statement is already recorded. Therefore, there is no scope for further investigation. The wrist watch is brought for his friend. The applicant had no role

to play in any manner whatsoever not he has benefited by any of such acts. Admittedly the applicant has not participated in the alleged acts of smuggling nor he had any intentions of evading any Customs Duty and/or nor has participated in buying and selling of said watch, in fact the sale of the said watch till date has not been concluded, and the same would have got concluded after it was approved and upon remitting the payment to the seller. There is no economic loss caused as neither has the watch been purchased for and the physical custody of the watch is with the custom authorities. Therefore, he prayed for bail.

6. The AIU objected the application on the grounds that investigation is in progress. The statements recorded by the AIU officer disclosed there is direct involvement of the applicant in the commission of the offence. The wrist watch is above Rs.1 crore. Its value is Rs. 2,71,89,000/-. Four times applicant has visited to Bangkok for what purpose and to whom he has brought the said valuable wrist watch that inquiry has not been done. If the applicant is released on bail he will tamper the prosecution evidence. Hence, prayed for rejection.

7. Following points arise for my determination and my findings to them are as stated below for the following reasons.

Points	Findings
1. Whether the applicant is entitled for bail?Yes
2. What Order?	...As per final order.

REASONS

As to point nos.1 and 2.

8. Considered the submissions, it appears from the record the applicant is found travelling alongwith wrist watch worth Rs.2,71,89,000/-. He is caught by AIU officer CSMI Airport. The said wrist watch has been brought by the applicant by non declaring and evading the custom duty chargeable on it. Therefore, he has been arrested for the offences punishable u/s. 135 (1)(a), 135 (1)(b) and 135 (1) (A) of the Customs Act 1962. Therefore, I would like to refer the provisions of the Customs Act.

Section 132 of the Custom Act reads as under:-

132. False declaration, false documents, etc.- Whoever makes, signs or uses , or causes to be made, signed or used, any declaration, statement or document in the transaction of any business relating to the customs, knowing or having reason to believe that such declaration, statement or document is false in any material particular, shall be punishable with imprisonment for a term which may extend to [two years], or with fine, or with both.

135. Evasion of duty or prohibitions: - [(1) Without prejudice to any action that may be taken under this Act, if any person-

(a) is in relation to any goods in any way knowingly concerned in mis declaration of value or in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any prohibition for the time being imposed under this Act or any other law for the time being in force with respect to such goods or

(b) acquires possession of or is in any way concerned in carrying removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111 or section 113, as the case may be; or

(c) attempts to export any goods which he knows or has reason to believe are liable to confiscation under section 113; or

(d) Fraudulently avails of or attempts to avail of drawback or any exemption from duty provided under this Act, in connection with export of goods; he shall be punishable, -

(i) in the case of an offence relating to, -

(A) any goods the market price of which exceeds one crore of rupees; or

(B) the evasion or attempted evasion of duty exceeding thirty lakh of rupees; or

(C) such categories of prohibited goods as the Central Government may, by notification in the official Gazette, specify; or

(D) fraudulently availing of or attempting to avail of drawback or any exemption from duty referred to in clause (d) if the amount of drawback or exemption from duty exceeds thirty lakh of rupees, with imprisonment for a term which may extend to seven years and with fine;

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, such imprisonment shall not for less than one year;

(ii) in any other case, with imprisonment for a term which may extend to three years, or with fine, or with both

(2) if any person convicted of an offence under this section or under sub section (1) of section 136 is again convicted of an offence under this section the, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to seven years and with fine.

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court such imprisonment shall not be for less than one year].

(3) For the purposes of sub-sections (1) and (2), the following shall not be considered as special and adequate reasons for awarding a sentence of imprisonment for a term of less than [one year], namely-

(i) the fact that the accused has been convicted for the first time for an offence under this Act;

(ii) the fact that in any proceeding under this Act, other than a prosecution, the accused has been ordered to pay a penalty or the goods which are the subject matter of such proceedings have been ordered to be confiscated or any other action has been taken against him for the same act which constitutes the offence;

(iii) the fact that the accused was not the principal offender and was acting merely as a carrier of goods or otherwise was secondary party to the commission of the offence;

(iv) the age of the accused.]

9. It appears from the section, any person, in relation to any goods in any way mainly concerned in any fraudulent evasion or attempt at the evasion of any duty chargeable thereon shall be punished with imprisonment for a term which may extend to seven years and with fine. In the case of offence relating to any goods is the market price of which exceeds Rs.1 crore.

10. It is to be noted that wrist watch found in the possession of the applicant that has been seized by the AIU officer. The statement of the applicant u/s. 108 of the Customs Act has been recorded. Applicant alongwith application filed receipt Ex.A. of seized watch. It appears from the receipts, the value of watch is US \$ 13,895.00 below Rs.10 lakhs. Except say AIU has not filed any documentary evidence about the value of Wrist watch is Rs.2,71,89,000/-, Therefore, prima facie receipt disclosed value of watch is below Rs.10 lakhs. As per the provisions the good value below Rs.1 crore imported by evading the tax, the offence punishable under this Act is bailable. Since 16.10.2019 he is in JC. In such circumstances, in my view, there is no need to keep the applicant behind bar. In say , AIU contended that if applicant is released on bail, he will tamper the evidence of the prosecution that apprehension of the AIU can be resolved by imposing stringent conditions. Thus, I answer point nos.1 and 2 accordingly. Hence, I pass the following order.

ORDER

BA No.2797/2019 is allowed subject to following conditions.

a. the applicant Kavinkumar Chandresh Mehta shall be released on bail in connection with RA No.249/2019 registered in AIU, CSMI Airport, CSMI, Mumbai under sections 135 (1)(a), 135 (1)(b) and 135 (1)(A) r/w. 104 of the Customs Act,1962 on his executing personal bond of Rs.50,000/- (Rs. Fifty Thousand) with one or two solvent sureties in the like amount.

b. that applicant to attend AIU office, at C.S.M.I. Airport, Mumbai on every Monday between 11.00 a.m. to 02.00 p.m.till the completion of the investigation.

c. that applicant shall make himself available for interrogation by AIU officer as and when required under written intimation until further orders;

d. that applicant shall not directly or indirectly make any inducement, threat or promise to any other person acquainted with the facts of the accusations against him so as to dissuade him from disclosing such facts to the Court or to any officer.

e. that applicant shall not leave India without prior permission of the Trial Court.

f. That applicant to surrender his passport with AIU officer.

g. The provisional cash bail of Rs.50,000/- in lieu of surety is granted for the period of one month from today.

- h. On failure of any one of these conditions, will amount automatically cancel of this bail.
- i. Bail before Learned Metropolitan Magistrate.