

BEFORE THE SPECIAL COURT FOR ECONOMIC
OFFENCES: AT BANGALORE.

Dated this the 30th day of October 2021

: Present:
Smt. PREETH. J.,
Presiding Officer, Special Court
for Economic Offences, Bangalore.

Cr.No.31-2021.
O.R.No.20/2020-21.

Complainant: Superintendent of Customs,
Intelligence Unit, (CIU),
Airport and Air Cargo Complex,
Bangalore - 560 300.

(By Spl. Public Prosecutor)

Vs

Accused: Udit Jain,
R/o.H No.14-A, DDA Flats,
Taimoor Nagar, Behind
Gurudwara, New Friends Colony,
New Delhi - 110065.

(By Sri. B.A., Advocate)

ORDER ON BAIL APPLICATION FILED BY ACCUSED U/S.437 OF CR.P.C.,

1. On 18-10-2021 the accused was arrested by the
Inspector of Customs, Delhi Customs Preventive at Delhi
and he was produced before the Magistrate, Patiala
House Courts, Delhi and obtained transit warrant and

then the accused was brought to Bangalore on 19-10-2021 and after recording his statement and is produced before this court on 20-10-2021 by the complainant. The allegation against the accused is that he was illegally exporting the antique which is said to be the idol of Lord Vishnu. On being satisfied with the grounds urged in the remand application, the accused was sent to the judicial custody.

2. The accused filed bail application under section 437 of Cr.P.C. seeking the regular bail on the ground that he is innocent and has not committed the alleged offence. There is no material to the effect that the accused participated in the commission of alleged offence. The idol in question is not antique as alleged by the complainant, but only antique look is given to the same so as to fetch more prices in the international market. The alleged report/certificate given by the concerned authority stating that the idol is antique is not in accordance with law. The accused is the permanent resident of Delhi,

thus, the apprehension that accused may flee or obstruct administration of justice in any manner has no basis. The offence alleged against the accused is though non-bailable, it is not punishable with death or life imprisonment. The accused has no bad antecedents. Accused is ready and willing to abide by all such terms and conditions likely to be imposed.

3. The complainant filed the objection by reiterating the case and contended that the offence committed by the Accused is punishable up to 7 years. The offence committed by the accused is serious in nature. The accused did not co-operate with the investigation process and he failed to appear before the I.O and dishonoured the summons issued to him on several occasions. Hence, prayed to reject the application.
4. Heard the Ld. counsel of the accused and Spl.P.P. Perused the bail application and the objection filed thereto and materials on record. The points that arise for my determination are:

Point No.1: Whether the accused is entitled for the bail?

Point No.2: What order?

5. My answer to the above said points are as under:

Point No.1: In the Affirmative.

Point No.2: As per the Final orders for the following:

REASONS

6. **Point No.1:** The remand application and the documents on record goes to show that the accused is the consigner of the idol in question and the same was consigned in the Month of August-2020 and it also goes to show that the consignment was detained in the courier cell on 21-10-2020 as the same appeared antique in nature and thereafter, further investigation was carried out. It is alleged that the idol in question was referred to Archaeological Survey of India and after inspection the idol is identified as “Male Deity (Surya)” and certified as “Antiquity” vide letter dated 08-12-2020. From the records, it also reveals that summons was issued to the accused on 06-02-2021 and his statement was recorded

under section 108 of the Act on 16-02-2021. In the statement the accused has stated that the idol is manufactured in their factory of which his father in the Proprietor and the idol is of Lord Vishnu and not Surya. He has also stated that the idol is very new and they have given antique look so as to fetch more prices in the international market. Now, there is no dispute that the idol in question is seized by the complainant and the same is kept in safe custody with M/s.EICI.

7. It is the contention of the complainant that the idol was sent for re-examination at the request of the accused and another report is obtained by the competent authority dated:23-07-2021 stating that the idol is antique and this result is conveyed to the accused. It is also the contention of the complainant that summons dated:28-07-2021 and 05-08-2021 were issued to the accused to appear before the Superintendent of Customs (CIU), but the accused has not appeared. And accordingly, the accused was

arrested on 18-10-2021 and produced before this court by obtaining transit order.

8. On perusal of the remand application, the only ground urged for rejection of bail is that the accused did not co-operate through the investigation by not appearing before them. There is no whisper in the remand application or in the objection filed for the bail application that the investigation is still in progress. From the records produced before this court on behalf of the accused, it goes to show that the issuance of notice dated:28-07-2021 and 05-08-2021 is not disputed by the accused. On the other hand, the documents produced by the accused goes to show that he has issued reply in response to the summons referred above and in the said reply he has sought to providing with some documents by the department in connection with the allegations made against him. The complainant is silent about this reply in the remand application or in the objections filed by them for the bail application. Even, during the course of

arguments, it is not clarified if the complainant/department has provided with the documents to the accused as sought for by him. Moreover, the complainant has also not denied about the reply given by the accused to the summons referred above. Further, on perusal of the documents produced by the accused, it also goes to show that another summons is issued by the Superintendent of Customs, Bangalore, calling upon the accused to appear before the Prl. Commissioner of Customs, Bangalore on 18-10-2021. The counsel for the accused has produced the copy of the Air ticket which is booked by the accused to come down to Bangalore on 18-10-2021. But admittedly, the Customs Officers at Delhi arrested him at Delhi on 18-10-2021. From the endorsement made in the summons refereed above, it appears that the accused was served with the summons and was arrested. As such, it is obvious that the accused was unable to keep himself present before the Prl. Commissioner of Customs at Bangalore, though he had the intention of co-operating with the I.O, at Bangalore. As such, from the attending

circumstances, it goes to show that the allegation made by the complainant that the accused did not cooperate with them for the investigation is totally misleading.

9. It is argued by Ld. Spl.P.P., that the economic offences are serious offences and only for the reason that it is punishable up to 7 years and triable by this court, bail cannot be granted. It is also argued that in this type of cases the economy of the country will be effected and the public is large will be effected if the accused is released on bail.
10. The object of bail is to secure the attendance of the accused at the investigation and also the trial. The bail is not to be withheld as a punishment. Granting of bail in a non-bailable case is the discretion of the court which is to be exercised judiciously. There is no hard and fast rule and no inflexible principle governing the exercise of such discretion by the court. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or refusing bail. Here, in the case on hand, as

discussed supra, it is not the case of the I.O that investigation is pending. The only ground for rejection of bail is at Para No.10 of the objection which states that the accused did not co-operate through the investigation and he failed to appear before the I.O., but this statement is falsified by the documents produced by the accused which is also discussed supra. Only, if the investigation is not complete and if the accused is released on bail is likely to hamper the investigation. But, in the case on hand, the alleged crime is detected in the Month of August-2020 and the investigation is also done and the property is also seized by the department. Now, only thing that is remaining is to file a private complaint, if the department wishes to do so. In the case on hand, the complainant instead of filing the complaint, has issued summons to the accused and got his arrested at Delhi only to see that he is behind bars for the best reasons known to the officers of the department. Hence, only the considerations which should normally weigh with the Court in the case of other non-bailable offences should

also apply to this case though the offence alleged is Economic Offence. There is no hard and fast rule that the bail must be refused invariably in Economic offences.

11. The contention of the prosecution during the course of arguments, that accused may tamper the evidences and will cause obstruction to the investigation is not acceptable for the reasons discussed supra. Thus, taking into consideration the facts and circumstances of the case on hand with is discussed in detail, the accused is entitled for bail with conditions. Accordingly, this Point No.1 is answered in affirmative.

12. **Point No.2:** For the reasons stated above, I proceed to pass the following;

ORDER

The bail application filed by the accused under section 437 of Cr.P.C. is allowed.

The accused is released on bail, subject to executing the personal bond for Rs.1,00,000/- (Rs. One Lakh only) and furnishing one solvent surety for like sum

or cash security of Rs.50,000/- on the following conditions:-

- 1) Accused shall co-operate with the investigation of the case if any and appear before the I.O. whenever called upon.
- 2) Accused shall produce the documents or any other material evidence in his custody on being asked by the I.O.
- 3) Accused shall furnish his contact numbers and the particulars of jurisdictional Police station to enable the I.O. to get his presence to proceed with investigation.
- 4) Accused shall not involve himself in the commission of similar offence.
- 5) Accused shall not leave India without the permission of the court.

(Typed by me, directly on computer, corrected and then pronounced by me, in open court on this the 30th day of October - 2021)

(PREETH. J.)
PRESIDING OFFICER,
SPL.COURT FOR ECONOMIC OFFENCES,
BANGALORE.

