

Rajasthan High Court  
(Union Of India vs Anil Gadodia) on 2 December, 2015

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR  
S.B. Criminal Misc. Bail Cancellation Application No.4688/2014  
(Union of India Versus Anil Gadodia)

S.B. Criminal Misc. Bail Cancellation Application No.8363/2014  
(Director of Revenue Intelligence Versus Rameshwar Sharma)

Date of Order :: 2nd December, 2015

PRESENT

HON'BLE MR. JUSTICE MAHESH CHANDRA SHARMA

Mr. S.S. Hasan, for the petitioner(s)

Mr. Lokesh Sharma)

Mr. Rajesh Sharma) for the respondents

Mr. Suresh Sahni ) These cancellation of bail applications have been filed under Section 439 (2) CrPC.

The factual matrix of the are are that the petitioner Directorate of Revenue Intelligence received a specific intelligence that one syndicate, whose kingpin is one Mr. Anil Gadodia, is involved in illegal storage and then export of red sanders, a prohibited item under CITES (Convention on International Trade in Endangered Species) of Wild Fauna and Flora in the guise of genuine exports. As per the intelligence report, Anil Gadodia used to procure Red-sanders in trucks from South India and was storing the same in his various godowns at Wazirpur / Kadipur / Burari (Delhi) and further supplied the same to one Mr. Chan, who is a person of Thai origin and was acting at the behest of one Mr. Lin of Chinese origin. Mr. Mayur Ranjan @ Vijay was the person, who was coordinating between Chinese / Thai persons and Mr. Anil Gadodia. The aforesaid intelligence was further processed and it was found that the export of red sanders to Mr. Lin is being done through the accused respondent Rameshwar Sharma of M/s. Euro Exports, Jaipur, who is a marble exporter by concealing the same in the export consignments of marble.

Acting upon the said intelligence, a joint operation was planned by DRI at Delhi, Jaipur and Gandhidham. Accordingly, at Mundra Container Freight Station, five containers bearing No. OOLU 1353571, GESU 3745115, TCLU 2021818, OOLU 3797929 and TCKU 2993598 attempted to be exported by M/s. Euro Exports vide shipping bill Nos. 7656093 dt. 25.9.2013, 7615545 dt. 23.9.2013, 7628969 dt. 24.9.2013, 7616229 dt. 23.9.2013 and 7630622 dt. 24.9.2013 respectively were called back and were opened in the presence of the independent witnesses under Panchanama dated 28.9.2013. During the course of examination, containers destined for Hong Kong, 14.25 Mts of Red Sanders was found concealed behind crates containing 93.31 Mts of Marble Slabs instead of 104 Mts of Marble Slabs as declared in Shipping Bills. The export of Red Sander from India is prohibited and the goods mis-declared by M/s. Euro Exports, Jaipur is in violation of the

provisions of the Customs Act, 1962 i.e. the 14.25 MT of logs of Red Sanders of different size and shape attempted to be exported illegally out of India under the cover of said Shipping Bills were placed under seizure under the provisions of Section 110 (1) of the Customs Act, 1962 under the reasonable belief that the same were liable to confiscation under the provisions of the Customs Act, 1962. The marble slabs used for concealment of prohibited Red Sander i.e. 93.31 MT of Marble slabs stuffed in above four containers for concealment of Red Sanders logs were also placed under seizure under the provisions of Section 119(1) of the Customs Act, 1962 under the reasonable belief that the same were liable to confiscation under the provisions of the Customs Act, 1962. Accordingly, a joint search operation was conducted on 28.9.2013 by DRI at Delhi and Jaipur.

The search conducted at residential cum business premises of Mr. Anil Gadodia at Kedar Building, Old Subji Mandi, Delhi resulted in recovery of around 23.03 kgs. Of red coloured wood and 75.9-9 kgs. Of brown coloured wood, Rs. 14.5 lacs in cash and certain incriminating documents / laptop / CPU / pen drives, which were resumed for investigation. One Mr. Shiv Kumar Jogi, who came during the search at the residence of Shri Anil Gadodia to make the payment for the purchase of red sanders also inter-alia stated that he had been purchasing red sander wood from Shri Anil Gadodia in cash without any bills and the cash of Rs. 10 lacs recovered from him belonged to Mr. Gadodia for the red sanders he had sold him without bills. The cash of Rs. 10 lacs was also resumed under panchanama dt. 28.9.2013. The cash amounting to Rs. 24.50 lacs and goods / documents, resumed on 28.9.2013 under panchnama, were later on seized under Section 1190 of the Customs Act, 1962.

The search conducted at the godown of Mr. Gadodia at A-32, Wazirpur Industrial Area, Delhi, resulted in recovery of one exercise book marked VIRAT containing details related to Red Sanders / Sandal wood written page 1-8 and following goods of Red Sanders and Sandal wood:

Sr. No. Description of goods Nos.

Remarks Logs of red sanders 60 pcs.

Approx. length 2-3 ft.

-do-

Approx. length 4-7 ft.

Pkt. Of Red Sanders packed in wooden box 10 pkts Approx. length 3-5 ft White wood logs (may be sandal wood) 60 gunny bags Approx. length 3-5 ft.

-do-

32 pcs Approx. length 3-5 ft.

White wood powder 32 bags Packed in HDPE bags Red Wood powder 3 bags Packed in HDPE bags Brown wood power 12 bags Packed in HDPE bags Red Sanders Cubes 17 bags Packed in HDPE bags

White wood stick 3 bags Packed in HDPE bags Red Sanders Stick 104 bags Packed in gunny bags  
Small pieces of Red sanders wood 74 bags Packed in gunny bags White wood chips (chhilka) 62 bags  
Packed in gunny bags

-do-

27 bags Packed in HDPE bags Granules (Burada) of red sanders wood 104 bags Packed in HDPE bags Granules (Burada) of white wood 65 bags Packed in HDPE bags Small peeled white wood in pieces 13 bags Packed in gunny bags During the search, no stock register, no valid or legal documents were found related to above goods, therefore, the above goods were later on seized under the Customs Act, 1962. Various other searches were made at the residence of Mr. Mayur Ranjan at NP 157D, Near Gopal Mandir, Pitampura, New Delhi, at the residence of Mr. Yodying @ Chan at F-76, 3rd Floor, Mansarovar Garden, New Delhi; at the go-down of Mr. Daljeet at Khasra No. 33/15, Village Nilothi, Vikas Vihar, Chander Vihar, Nilothi Extn. Gali No 9, New Delhi; at the residence of Mr. Daljeet at 94, Upper Ground Floor, Abchal Nagar, Nilothi Extn., Chander Vihar, Delhi; at the residence of Shri Saurav Chopra at WZ-276-C, 2nd Floor, Inderpuri, New Delhi; at the residence of Shri Kamal Negi at B-12/24, Kaushik Enclave, Burari, New Delhi, which resulted in recovery of various articles and lacs of rupees and the same were later-on seized under the Customs Act.

Mr. Anil Gadodia and Mr. Rameshwar Sharma were found involved in illegal trade and export of red sander wood and accordingly, an FIR No. DRI F.No. 840/JPR/19-XXIII/2013 was registered at Directorate of Revenue Intelligence, Regional Unit, Jaipur for the offences under Section 132, 135-A, 135-B and 135-C of the Customs Act, 1962. Thereafter the investigation was commenced and during the course of investigation, the accused respondents were arrested on 29.9.2013 under Section 104 of the Customs Act, 1962 in connection with seizure of 14.25 Mts of red sanders at CFS Mundra from containers of M/s. Euro Exports, Jaipur and produced before the Magistrate concerned on 30.9.2013, who sent them to Judicial Custody. They moved the bail application(s) U/s. 437 CrPC before the Court of Addl. Chief Metropolitan Magistrate, Economic Offences, Jaipur, but the same was/were dismissed vide order dated 1.10.2013. Thereafter they moved the bail application(s) under Section 439 CrPC before the Court of Addl. Sessions Judge No.8, Jaipur Metropolitan, which was/were dismissed vide order dated 15.10.2013. Thereafter they approached this Court by way of filing the bail applications numbered S.B. Cr. Misc. Bail Application No. 11456/2013 titled Rameshwar Sharma Versus Directorate of Revenue Intelligence, Jaipur and bail application numbered S.B. Cr. Misc. Bail Application No. 11175/2013 titled Anil Gadodia Versus Union of India through DRI. Both the aforesaid bail applications were dismissed by the Coordinate Bench of this Court vide order dated 9.12.2013 with the following observations:

I have given due consideration to the rival submissions advanced by the learned counsel appearing on behalf of the parties.

During a raid conducted by the team of Director of Revenue Intelligence on 28.9.2013 at various premises in Delhi, Mundra and Jaipur Red-Sandalwood logs were recovered. 14.25 Mts of red-sanders were recovered at Mundra Port from the container of M/s. Euro Exports, Jaipur. Recovery of 95 bags of red-sanders logs and 2.51 piece of small red-sanders etc. from the godown of

Anil Gadodia was effected. 8.5 Mts. Of red-sanders logs were seized from the godown of one Daljeet Singh. The department of Revenue Intelligence have got record of the past consignments whereby red-sanders were exported through M/s. Euro Exports, Jaipur. Anil Gadodia in his statement has admitted that he has supplied red-sanders procured illegally for illegal export through containers of Rameshwar Sharma. Anil Gadodia has been actively in touch with one Mayur Ranjan @ Vijay. Accused Anil Gadodia has also admitted that he has received Rs. One-crore for supply of red-sanders. He was also involved in one case of similar nature, where red-sanders were seized. It is definite stand taken by the Department that the red-sanders recovered from the godown of Anil Gadodia were meant to the exporters through Rameshwar Sharma in containers meant for export of marble.

Taking into consideration the past conduct of the petitioners, this Court is of the view that the petitioners have been actively involved in export of prohibited item, by adopting illegal means to enrich themselves unlawfully. Offence, committed by the accused is a social economic offence. They acted for greed.

Taking the past transactions into consideration, this court is of the view that it is difficult to rule out that if the petitioners are released on bail, they will not indulge in similar activities.

To prohibit re-occurrence of offence of similar nature, this Court is of the view that the petitioners are not entitled to benefit of grant bail.

It has come in evidence that several cases have been registered at Delhi. Director of Revenue Intelligence is in process of unearthing previous transactions and offence committed by the petitioners in past. Therefore, to facilitate the Investigating Agency to find out involvement of the petitioners in previous transactions of illegal exports and to stop re-occurrence of similar activities in future, the petitioners are held not entitled to grant of benefit of bail.

Resultantly, both these applications are, hereby, dismissed.

Thereafter they filed the bail applications before the court of Addl. Sessions Judge No. 8, Jaipur Metropolitan, but the same have been allowed vide order dated 25.2.2014 and 12.5.2014 respectively. Against the said order, both these cancellation of bail applications have been filed by the petitioner.

Learned counsel for the petitioner has contended that investigation has been completed and charge sheet has already been filed against the present accused respondents, whereupon the court has taken the cognizance of the offences against the present accused respondents. He has further contended that a show cause notice under Section 124 of the Customs Act, 1962 proposing confiscation of the seized red sanders and marble slabs used for concealment of the same along-with imposition of penalty on Shri Anil Gadodia and his associates has been issued on 24.3.2014. He has further contended that the order passed by the court below is not sustainable in the eye of law, especially when the Coordinate Bench of this Court had already dismissed the bail applications of the accused respondents on merits, without granting any liberty to the accused persons. He has

further contended that the Court below cannot overlook the order passed by the High Court rejecting the bail application of the accused persons U/s. 439 CrPc. He has further contended that during the course of investigation, it was also revealed that the accused Anil Gadodia is a habitual offender and a show cause notice for his involvement in smuggling of red sander in another case made by DRI had been served vide letter dated 22.11.2011, where the competent authority after concluding the show cause notice passed an order to confiscate 8302.9 kg. Of red sander, seized on 15.11.2011 at his godown premises at 469/2, Nehrupura Road, Burari, Delhi and also imposed penalty of Rs. 10.00 lakh on him.

Similarly in the case of accused Rameshwar Sharma, it was revealed during the course of investigation that he is the owner of M/s. Euro Exports but he has concealed the red Sanders in the export consignment of marble and has been exporting Red Sanders in his containers. He has committed the offences punishable under Section 132, 135(1) (a), (b) and (c) of the Customs Act, 1962 with imprisonment upto seven years and with fine in connection with seizure of 14.25 Mts of red Sanders at CFS Mundra from containers of M/s. Euro Exports, Jaipur. He has further contended that accused Yodying had disclosed the name of consignee who exported Red-Sanders by using export firms / companies. As per the details given by him, through Anil Gagodia and Rameshwar Shama, value of Red-Sanders smuggled out of the India is Rs. 4-5 crores. He has further contended that there is clinching evidence that Rameshwar Sharma was smuggling prohibited wood Red-Sanders after receiving it from Anil Gadodia and who was actively in touch with Mayur Ranjan @ Vijay, Rameshar Sharma and Yodying.

He has placed reliance on the call details and urged that all the accused being members of syndicate were involved in illegal activities and they had a meeting near Chandwaji on Jaipur Delhi Highway in connection with illegal export of Red-Sanders. Besides this, there is a statement of Suresh Kumar Sharma, a relative of Rameshwar Sharma, which clearly gives depiction as to how red-sanders logs were sealed and packed between the marbles slabs.

He has further contended that Red-sander is commonly called Red sandalwood. It is common knowledge that this wood fetches exorbitant price in China and thus, has a lucrative market for smugglers to send this wood to China by adopting various unlawful means.

Hence, it is evident on the basis of these evidences that both the accused persons are habitual offenders and in order to prohibit re-occurrence of the offence of similar nature, the Coordinate Bench of this Hon'ble Court in its order dated 9.12.2013 passed in bail Application No. 11175/2013 observed that the accused respondents are not entitled for the benefit of grant of bail, and, therefore, enlarging the accused persons on bail by the court below is not only contrary to the facts, but also contrary to the verdict and findings given by the Coordinate Bench of this Court. He has further contended that investigation in another case of similar nature is pending and there is every chance of hampering the investigation and influencing the witnesses in another case booked at Delhi. He has further contended that the trial court had enlarged the accused respondents on bail merely relying upon the judgment pronounced in the case of Sanjay Chandra Versus CBI (AIR 2012 SC 830), wherein the Hon'ble Apex Court had enlarged the accused persons on bail, considering the fact that alleged offences were relating to telecommunication laws and telecom service license and

spectrum obtained fraudulently, whereas in the present case the offence committed by the accused respondents is an offence of social economic nature of international ramifications, which is very serious considering that Red Sanders is included in the endangers list of plants in CITES, an international agreement signed by 180 countries. Hence these cancellation of bail applications should be allowed and the bail granted to the accused respondents by the court below should be cancelled and they should be sent behind the bars. In support of their contentions, he has placed reliance on the following authorities:

- (i) AIR 1987 SC 1321 (State of Gujarat Versus Mohanlal Jitmalji Porwal & Anr.)
- (ii) AIR 1984 Supreme Court 1503 State Versus Jaspal Singh Gill
- (iii) 1997 (2) Crimes 168 N. Sasikala Versus Enforcement Officer, Enforcement directorate Madras
- (iv) 1998 (1) JCC (Delhi) Shalini Rawat Versus the State
- (v) 1994 Cr. L.J. 188 (Raj Kumar Gupta Versus Union of India)
- (vi) 2008 (13) SCC page 584 Naresh K. Amin Versus State of Gujrat
- (vii) 2009 (13) SCC page 785 Manjit Prakash & Ors. Versus Shoba Devi & Anr.
- (viii) 2009 (14) SCC page 638 (Subodh Kumar Yadav Versus State of Bihar)
- (ix) 2011 (6) SCC page 189 Prakash Kadam & Ors. Versus Ram Prasad Vishwanath gupta

(x) 2013 (1) CLR Page 321 {Madhvi Sharma (Smt.) Versus State of Rajasthan} On the other hand, learned counsel for the accused respondents have opposed the same. They have contended that the accused respondents have correctly been granted bail and bail once granted is not liable to be cancelled. They have further contended that the petitioner has not made out a strong case that the impugned order is manifestly illegal, unjust and improper. No compelling situation has been made out in the said application for the cancellation of bail. They have further contended that merely because there is a serious offence against the accused respondents, it cannot be a ground for cancellation of bail, which has been granted by the court below after taking into consideration all facts of the case. They have further contended that none of the conditions for recall of the bail do exist. In support of their contentions, they have relied on the following judgments/orders:

- i) Smt. Uganti Versus State of Rajasthan & Ors. - S.B. Cr. Misc. Bail Cancellation Application No. 9125/2013; decided on 22.1.2014
- ii) Aslam Baballa Desai Versus State of Maharashtra (1992) 4 SCC 272
- iii) Dinesh M.N. (SP) Versus State of Gujarat (2008) 5 SCC 66

iv) Vimalben Ajitbhai Patel Versus Vatslabeen Ashokbhai Patel AIR 2008 (SC) 2675

v) State Versus Sanjay Gandhi 1978 2 SCC 411

vi) Sami Ullaha Versus Superintendent, NCB, AIR 2009 They have further contended that when two views are possible, the view which leans in favour of the accused must be favoured. They have further contended that it is easier to reject a bail application in a non-bailable case, than to cancel a bail granted in such a case.

They have further relied upon a decision rendered by Hon'ble Supreme Court in the case of Dolat Ram and others Versus State of Haryana reported in (1995) 1 SCC 349 and contended that rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with in different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail, already granted.

I have heard learned counsel for the parties and carefully perused the relevant material on record.

In the case of Jaspal Singh Gill (supra), their Lordship of Hon'ble Supreme Court held that the court before granting bail in cases involving non-bailable offences particularly where the trial has not yet commenced should take into consideration various matters such as the nature and seriousness of the offence, the character of the evidence, circumstance which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at the trial, reasonable apprehension of witnesses being tampered with, the larger interest of the public or the State and similar other considerations.

In the case of Prakash Kadam (supra), their Lordships of Supreme court held that gravity and nature of the offence, prima facie case against accused, position and standing of accused, etc. are factors other than misuse of bail to be considered for bail cancellation.

It is a fact that both the accused respondents were found involved in illegal trade and export of red sander wood and accordingly, a complaint in the case had been filed on 28.11.2013 against the accused persons before the Chief Metropolitan Magistrate (Economic Offences), Jaipur. Subsequently, they were arrested. After their arrest, they moved the bail application under section 437 CrPC before the Chief Metropolitan Magistrate on 30.10.2013, which was dismissed vide order dated 1.11.2013. Thereafter the accused respondents moved a bail application before the Court of Sessions Judge, which was dismissed by the Court below vide order dated 15.10.2013 observing that in view of this Court, no case of grant of bail is prima facie made out by the petitioner having regard to peculiar facts and circumstances obtaining in this case as per records of the case. Subsequently the accused respondents filed S.B. Cr. Misc. Bail Applications before this Court but the same were rejected by the Coordinate Bench of this Court vide order dated 9.12.2013, taking into consideration the past conduct of the petitioners, the past transactions and the possibility that if the petitioners are released on bail, they will indulge in similar activities and in order to prohibit re-occurrence of offence of similar nature, the accused respondents were not held entitled to benefit of bail. Thereafter the Chief Metropolitan Magistrate (Economic Offences), Jaipur took cognizance of the

offences against the accused persons. After taking into consideration of the offences by the competent Magisterial Court, 2nd bail application was filed before the trial court, which was dismissed vide order dated 3.2.2014. However, the learned Court below allowed the bail application filed by the accused respondents under Section 439 CrPC vide his order dated 25.2.2014, ignoring the order dated 9.12.2013 passed by the Coordinate Bench of this Court dismissing the bail applications of the accused respondents.

It is relevant to mention here that co-accused Yodying had been granted bail by the Delhi High Court and thereafter he absconded. There is strong possibility that he has gone out of Country and so far as the other co-accused person Mayur Ranjan is concerned, the petition filed by him for converting the arrest warrnat intoailable warrant has been dismissed by the Coordinate Bench of this Court and also imposed a cost of Rs. 50,000/- upon him, but that has not been deposited.

Furthermore the court below is found to have released the accused respondents on bail relying on the judgment rendered in the case of Sanjay Chandra Versus CBI, which was a case relating to telecommunication laws and telecom service license and spectrum obtained fraudulently, whereas in the present case, the offence committed by the accused respondents is an offence of social economic offence of international ramifications, which is very serious offence considering the fact that Red Sanders (Red Sandalwood) is included in the endangered list of plants in CITES, an international agreement signed by 180 countries, and the accused respondents are habitual offenders and the possibility of re-occurrence of offence of similar nature cannot be ruled out, particularly when red sandalwood has a lucrative market for smugglers and as per the details given by co-accused person, the Red-Sanders of the value of Rs. 4-5 crores has been smuggled out of the India, the court below is found to have committed error while granting bail to the accused respondents.

Looking to the facts and circumstances of the case, and the fact that Coordinate Bench of this Court had rejected the bail applications of the accused respondents vide order dated 9.12.2013 just few days before passing of the orders dated 25.2.2014, 12.5.2014 by Addl. Sessions Judge No. 8, Jaipur Metropolitan, making serious observations against the accused respondents, as mentioned here-in-above, as also the seriousness of the offence, the character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at the trial, reasonable apprehension of witnesses being tampered with, the larger interest of the public or the nation and similar other considerations, I pass the following order:

- i) The cancellation of bail applications filed by the petitioner are allowed;
- ii) The orders dated 25.2.2014, 12.5.2014 passed by Addl. Sessions Judge, Court No. 8, Jaipur Metropolitan, Jaipur in Bail Application Nos. 55/2014 and 143/2014 are set-aside and the bail granted to the accused respondents Anil Gadodia and Rameshwar Sharma by Addl. Sessions Judge No. 8, Jaipur Metropolitan vide orders dated 25.2.2014, 12.5.2014 is hereby cancelled.
- iii) The accused respondents are directed to surrender before Addl. Chief Metropolitan Magistrate (Economic Offence), Jaipur within a period of one week from today and thereafter the court below is

directed to take steps against the accused respondents in accordance with law.

iv) If the accused respondents do not surrender before the Addl. Chief Metropolitan Magistrate (Economic Offence), Jaipur within the aforesaid period of one week, then the Court below is directed to take action with regard to arrest of the accused respondents in accordance with law.

v) Dy. Registrar (Judl.) is directed to send a copy of this order to the Addl. Chief Metropolitan Magistrate (Economic Offence), Jaipur immediately for compliance.

(MAHESH CHANDRA SHARMA), J.

DK All corrections made in the judgment / order have been incorporated in the judgment / order being E-mailed.

Dilip Khandelwal PA