

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION NO. 2575 of 2018****With****R/SPECIAL CRIMINAL APPLICATION NO. 2576 of 2018****With****R/SPECIAL CRIMINAL APPLICATION NO. 2919 of 2018**

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NOURI ZAHED BARABI FIROZ

Versus

SUPERINTENDENT OF CUSTOMS

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Appearance:

MR D K TRIVEDI(5283) for the PETITIONER(s) No. 1

DS AFF.NOT FILED (N)(11) for the RESPONDENT(s) No. 1,4

MR DEVANG VYAS(2794) for the RESPONDENT(s) No. 2

NOTICE SERVED BY DS(5) for the RESPONDENT(s) No. 3

MR HK PATEL, APP(2) for the RESPONDENT(s) No. 5

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CORAM: HONOURABLE MR.JUSTICE J.B.PARDIWALA

Date : 09/05/2018**COMMON ORAL ORDER**

1. The matter will have to be heard at length. One of the petitions i.e. the Special Criminal Application No.2919 of 2018 has been filed by the department seeking enhancement of sentence. The other two petitions have been filed by the writ-applicants, who are Iranian Nationals. The Iranian Nationals were prosecuted and tried for the offence under Section-135 of the Customs Act. The case of the department is that they illegally imported gold weighing around 6 kgs. from Iran to India and thereby, they committed an offence under the Customs Act. The trial Court convicted them and sentenced to undergo one year rigorous imprisonment.

2. It appears that the Iranian Nationals did not file any criminal appeal questioning the legality and validity of the order of conviction and sentence. However, the department thought fit to file a Criminal

Revision Application in the Sessions Court for enhancement of the sentence. Such revision application came to be rejected by the Sessions Court.

3. Being dissatisfied with such order, the department is here before this Court with this application under Article-227 of the Constitution of India.

4. The main grievance of the learned counsel appearing for the Iranian Nationals is that although they have undergone the sentence, yet they have been confined in one hotel room in the City of Ahmedabad. Their movements are restricted. They are not allowed to get out of the hotel room. It is pointed out that the two Iranians are not allowed to move as on date. They do not have a single penny for food and other expenses.

5. Mr. Amin as well as Mr. Devang Vyas pointed out that it is not correct to assert that the movements are restricted . It is always open for the Iranian Nationals to get out of the hotel, but with prior intimation to the authority concerned.

6. Let me clarify that if the Iranian Nationals want to leave the hotel for the purpose of arranging finance etc., then they shall be permitted to leave so, however, after informing the concerned authority in this regard. There is one another aspect which needs to be noted. In the departmental proceedings, a penalty of Rs.75 lac has been imposed. This amount is yet to be deposited.

Post all the matters for final hearing on **12/06/2018**.

(J.B.PARDIWALA, J)

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