

ARJUN
MACHHINDRA
KADAM

wpl 32353-26-J.doc

Digitally signed by
ARJUN
MACHHINDRA
KADAM

Date: 2026.09.30
18:53:13 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 32353 OF 2026

Richa Shipping Private Limited
Through its Director
Mr. Shobhendra Sudhir Gandhi
Gandhi Complex, Shop No.1, Plot No.P-02,
Sector-43A, Chanje, Tal-Uran,
Maharashtra-400 702.

... Petitioner

Versus

1. The Union of India
Through the Secretary,
Ministry of Law and Justice,
Department of Legal Affairs,
Branch Secretariat, Aaykar Bhavan,
Annex, 2nd floor, New Marine Lines,
Mumbai – 400 020.
2. The Commissioner of Customs (Preventive)
Rummaging Section (RSR) and Rummaging
and Intelligence (R&I)
New Custom House, Fort, Ballard Estate,
Mumbai-400001.
3. The Additional Commissioner of Customs
(Export Assessment)
New Custom House, Fort, Ballard Estate,
Mumbai-400 001.

... Respondents

Mr. Pratik Karande a/w. Mr. Aditya Talpade, Mr. Akash Sable, Ms. Diksha Talpade and Mr. Prajwal Padole for the Petitioner.

Mr. Ram Ochani a/w. Ms. Sangeeta Yadav for the Respondents.

CORAM : M. S. KARNIK AND
SANDESH D. PATIL, JJ.
DATED : 30th SEPTEMBER, 2026.

JUDGMENT (PER M. S. KARNIK, J.)

1. The Petitioner seeks quashing and setting aside of the impugned Order dated 9th September, 2026 passed by respondent No.3 under Section 110A of the Customs Act, 1962, to the extent that it imposes a bond of Rs.12 crores, stated to be the value of the Barge M.T. Bay III and a bank guarantee of Rs.6 crores as conditions for its provisional release.

2. The contention of the petitioner is that the conditions imposed by Respondent No.3 in the impugned Order dated 9th September, 2026 under Section 110A of the Customs Act, 1962, for provisional release of M.T. Bay III are unjustified and unsustainable.

3. The facts of the case in brief are that Richa Shipping Pvt. Ltd. is the charterer of a barge, M.T. Bay III, which was seized by Customs during an investigation into alleged illegal transfer/export of fuel. Customs later agreed to provisionally release the barge, but imposed the aforesaid conditions. The Petitioner is not challenging the provisional release itself. The petitioner says that these two

financial conditions are excessive and unreasonable, particularly because the petitioner claims the barge is actually valued at about Rs.2.90 crore and the order does not explain how the Rs.6 crore security was calculated.

4. On 13th June, 2026, the barge was intercepted by the Customs authorities at TAI Anchorage, Mumbai Port Authority. The Customs authorities alleged that approximately 208 KL of blackish liquid, purported to be Very Low Sulphur Fuel Oil (VLSFO), had been transferred from tanks P2 and S2 of the barge to M.V. Angara, and an investigation was initiated under the Customs Act, 1962.

5. On 15.06.2026, Respondent No.2 issued a seizure memo under Section 110 of the Customs Act, 1962, whereby the barge M.T. Bay III was seized. The petitioner thereafter submitted a representation dated 22nd June, 2026, received on 23rd June, 2026, seeking provisional release of the barge. The Petitioner explained that the barge had been used by A.M.V. Sealeaders Shipping & Logistics LLP for supplying marine fuel to M.V. Angara on 13th June, 2026 and relied upon its charter arrangements with M/s. Bay Tankers Private Limited.

6. On 01.07.2026, M.V. Angara was released on executing

an e-Bond of Rs.16,12,03,600/- and an e-Bank Guarantee of Rs.30 lakh.

7. The petitioner submitted a further representation dated 2nd July, 2026, received on 13th July, 2026, concerning the release/transfer of approximately 459.755 KL of VLSFO, stated to have been purchased from Bharat Petroleum Corporation Limited (BPCL) under Provisional Invoice dated 11th June, 2026. The petitioner also referred to the continuing commercial losses arising from detention of the barge. On 24th July, 2026, A.M.V. Sealeaders Shipping & Logistics LLP submitted a Demand Draft of Rs.50 lakh as voluntary part payment towards fine/penalty in connection with provisional release of the said barge.

8. Thereafter, a further representation/email dated 16th August, 2026 was submitted seeking provisional release of the barge, referring to the financial hardship and continuing losses allegedly suffered on account of its detention. As the representation was not decided, the petitioner filed Writ Petition (L) No. 29544 of 2026 before this Court. By order dated 31st August, 2026, this Court directed respondent No.2 to decide the representation dated 16th August, 2026 within one week. Pursuant thereto, respondent No.2

issued a No Objection Certificate dated 7th September, 2026 for provisional release of the barge. By a further order dated 8th September, 2026, this Court directed that necessary action towards release be taken within two days. Thereafter, respondent No.3 passed the impugned Order dated 9th September, 2026.

9. Learned counsel for the petitioner contended that the impugned order does not disclose the basis or methodology for determining the value of the barge at Rs.12 crore or the basis for fixing the bank guarantee at Rs.6 crore. The petitioner relies upon the insurance policy and valuation report, which according to the petitioner value the barge at approximately Rs.2.90 crore.

10. Mr. Ochani, learned counsel for the respondents on the other hand submits as under:-

(A) The petitioner has an alternate statutory remedy and therefore the petition is not maintainable. It is submitted that as the impugned order has been passed by the Additional Commissioner of Customs, the petitioner has an efficacious statutory remedy of appeal before the Commissioner (Appeals) under Section 128 of the Customs Act, 1962, followed by an appeal before the CESTAT under Section 129A. This Court, in Commissioner of Customs (Import-I)

Vs. S. S. Offshore Pvt. Ltd.¹ has also recognised the availability of the appellate remedy against an order under Section 110A. The order was passed in compliance with the principles of natural justice. The petitioner was permitted to make an application for provisional release, afforded an opportunity of personal hearing, and a reasoned order was passed. Section 110A of the Customs Act, 1962 expressly empowers the adjudicating authority to provisionally release goods seized under Section 110, pending adjudication, upon taking a bond in the proper form with such security and conditions as the adjudicating authority may require. The discretion is provided by the statute in the adjudicating authority. The CBIC Circular No. 35/2017-Customs dated 16th August, 2017 provides guidance on provisional release, including security towards duty/differential duty and other potential liabilities, and permits the competent authority, for reasons recorded in writing, to increase or decrease the security depending upon the facts of the case.

(B) The discretion in the present case has been exercised reasonably, on relevant materials and to safeguard the interests of revenue. The petitioner's reliance on the bank guarantee of Rs.30

¹ 2018 (361) E.L.T. 51 (Bom)

lakh accepted in respect of M.V. Angara does not, by itself, establish that the Rs.6 crore bank guarantee in the present case is arbitrary, as Section 110A does not prescribe a uniform security for every case and the quantum may vary depending on the facts and circumstances, including the nature of the alleged offence, role of the person seeking release and other relevant factors.

(C) The Certificate dated 15th June, 2026 of Sharani Associates, Chartered Engineer & IBBI Registered Valuer supports the stand of the respondents that the realizable value of the barge is Rs.12 crore.

11. We have heard learned counsel. No doubt it is the discretion of the authority to impose such security and an order of provisional release on such conditions as the adjudicating authority is required. Further, there is an alternate remedy of appeal before the Commissioner (Appeals). In the present case, we are of the opinion that the conditions imposed are *ex facie* excessive and unreasonable and hence we are entertaining the present writ petition in the facts of this case.

12. The allegation is that approximately 208 KL of blackish liquid, viz. VLSFO had been transferred from tanks P2 and S2 of the

petitioner's barge to M.V. Angara. The VLSFO has been seized and later has been provisionally released. M.V. Angara, in which the VLSFO was released on executing an e-Bond of Rs.16,12,03,600/- and an e-Bank guarantee of Rs.30 lakh. Thus, we find that M.V. Angara which was called upon to execute e-Bond of Rs.16,12,03,600/-, was provisionally released on furnishing of an e-Bank Guarantee of Rs.30 lakh whereas the petitioner's barge is sought to be provisionally released on a bank guarantee of Rs.6 crore. The VLSFO was purchased from BPCL under the provisional invoice dated 11th June, 2026. On behalf of the petitioner, a demand draft of Rs.50 lakh as voluntary part payment towards fine/penalty in connection with provisional release of the said barge has already been deposited on 24th July, 2026.

13. The petitioner contends that so far as the valuation is concerned, the insurance policy and the valuation relied upon by it value the barge at approximately Rs.2.90 crore. The respondent on the other hand, produced the valuation report that the barge is valued at Rs.12 crore. Taking an overall view of the matter, in our opinion, the terms of the provisional release in the present facts should have been somewhat similar to one imposed on M.V. Angara

as the VLSFO was seized from M.V. Angara. We are therefore of the opinion that the petitioner need not be relegated to the remedy of an appeal and hence we have entertained the present petition.

14. No doubt, the respondents have produced the certificate of Sharani Associates that the value of the barge is Rs.12 crore, but at the same time there are materials produced on record by the petitioner to indicate the barge is valued at Rs.2.80 crore. In the facts and circumstances of the case, we are therefore inclined to interfere with the quantum of the security deposit which we find unreasonable and excessive. The adjudicating authority though, has discretion to permit the provisional release of seized goods upon such security and conditions as may be required, but such discretion has to be exercised reasonably on relevant materials to safeguard the interest of the Revenue. Section 110A of the Customs Act does not prescribe a uniform security for any case and the quantum depends on the facts and circumstances of each case including the nature of the offence, goods/cargo, value of the seized conveyance, revenue exposure, confiscation/fine/penalty implications, role of the person seeking release and other relevant factors. The conditions imposed for provisional release of M.V. Angara would, in our opinion, be

extremely relevant factor for the purpose of deciding the security and conditions to be imposed for provisional release.

15. Hence, the following Order:-

- (i) The writ petition is partly allowed.
- (ii) The condition of Bank Guarantee of Rs.6 crore is modified to Rs.50 lakh for the purpose of provisional release.
- (iii) Rest of the conditions in the impugned order shall remain intact.
- (iv) No order as to costs.

(SANDESH D. PATIL, J.)

(M. S. KARNIK, J.)