

GAHC010075122023



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : I.A.(CrI.)/291/2023**

JO NA THANG,  
S/O PHUN THAWN,  
R/O H. NO. V-12  
P.S. AND P.O. BWNGKAWN  
AIZAWL, MIZORAM  
PIN-796014

VERSUS

THE UNION OF INDIA,  
THROUGH ANTI SMUGGLING UNIT ANTI SMUGGLING UNIT, GUWAHATI,  
CUSTOM DIVISION GUWAHATI.

**Advocate for the Petitioner : MR. P N CHOUDHURY**

**Advocate for the Respondent : SC, CUSTOMS**

**BEFORE**  
**HONOURABLE MR. JUSTICE AJIT BORTHAKUR**

**ORDER**

**Date : 11.04.2023**

Heard Mr. PN Choudhury, learned counsel for the accused applicant as well as Mr. SC Keyal, learned Standing Counsel, Customs Department.

By this interlocutory application, the applicant has prayed for modification/ amendment of Bail conditions set in order dated 17.03.2023 passed in the connected Bail Application No.1035/2023.

The order, dated 17.03.2023 passed in the connected Bail Application No.1035/2023 read as below:

*“Heard Mr. PN Choudhury, learned counsel appearing for the accused petitioner as well as Mr. SC Keyal, learned Standing Counsel, Customs Department.*

2. *By this petition under Section 439 Cr.P.C., the accused-petitioner, namely **Jo Na Thang** has prayed for grant of bail in connection with **Customs Case No. 18/CL/IMP/AS/ GAU/2022-23** arrested under **7 (1) (c)** of the Customs Act, 1962 also r/w provisions of Wildlife Protection Act.*

3. *The case diary, as called for, is placed before the Court.*

4. *Mr. PN Choudhury, learned counsel appearing for the accused petitioner, submits that the accused has been languishing in judicial custody since 07.02.2023 and he is an uneducated youth working as a casual labour in the rural areas of Mizoram state with a family consisting of old aged ailing mother (aged about 73 years). According to Mr. Choudhury, the accused came down to Guwahati accompanied by James Colney and Pu Vanlalropuria-co-accused persons and stayed in room No.14, Lodge Kunjalata Bibah Bhawan, wherefrom the Custom Officials took him to custody without having recovered any contraband and showing any cause, but obtained his signatures on some documents without reading over to him. Mr. Choudhury submits that the Inventory of Goods under Section 110 of Customs Act was prepared at the Customs Office instead of at the Room No.14. Mr. Choudhury has raised several procedural lapses committed by the custom officials pertaining to search and alleged seizure of contraband prescribed in the Customs Act, 1962 and as such, strenuously submits that the accused may be directed to be released on bail.*

5. *Per contra, Mr. S.C. Keyal, learned Standing Counsel, Customs, submits that the accused and three others acquired and possessed 11.536 kg of suspected Ambergris valued at Rs.25,95,60,000/- for commercial purpose evading customs duty. Mr. Keyal further submits that the ICAR, Cochin has returned the samples of seized Ambergris to the sender informing that the said Institute does not have the required Certified Reference Material (CRM) to test and conclusively establish the authenticity of the Ambergris vide the copy of letter produced. Mr. Keyal, therefore, submits that at the present stage of investigation, the bail prayer of the accused petitioner may not be considered as he has not completed statutory period of detention of 60 days.*

6. *The complaint, in brief, is that on 05.02.2023, a specific information was received by the Anti-Smuggling Unit, Guwahati Customs Division about storage/concealment of 'Ambergris', a byproduct of*

sperm whales, within a flat located at Jyoti Path, Odalbakra, Lalganesh, Guwahati-34. Acting on the same, the officers of the said department conducted a search operation in the flat and recovered some solid waxy, irregularly shaped and sized substance having dull grey or blackish colour with a pungent smell from two cartons and a school bag weighing around 11.536 kgs. in total. Assuming the said substance to be whale vomit the Customs officials seized the same.

7. It is noticed that the accused petitioner has been in judicial custody since 07.02.2023, that is, for 38 days.

8. A perusal of the case diary, it is revealed that prima facie the accused petitioner imported suspected Ambergris, which is described as a solid, waxy, flammable substance of irregular shape and sizes appeared to have a dull gray or blackish colour with pungent smell and concealed the same in their apartment at Guwahati, by way of evasion of customs duty. It may be noted here that possession of Ambergris is illegal under Schedule I of the Wildlife (Protection) Act, 1972 and the Sperm Whale is protected under Schedule II of the said Act. The offence under Sections 135(1)(b)/135(1)(i)(A)/C of the Customs Act provides with imprisonment for a term which may extend to seven years and with fine and as such, the prescribed period of detention for the aforesaid offence is 60 days under Section 167(2)(ii) Cr.P.C.

9. The accused was arrested after notice of appearance was served on him on the spot.

10. The weight of the suspected Ambergris is 11.536 kgs, the approximate value of which in India, stated to be Rs.25,95,60,000/-. The exact identity of the seized substance is yet to be ascertained scientifically as the sample thereof is returned by the ICAR for want of testing facility vide the letter, dated 08.03.2023. The investigation is presently on at this almost final stage. The accused petitioner appears to be a permanent resident of Aizawl, Mizoram under Aizawl Municipal Council.

11. Therefore, this Court is of the opinion that in view of the above reasons, more particularly, the length of detention, no further continuation of detention of the accused in the interest of the ongoing investigation is called for.

12. Accordingly, it is provided that the accused petitioner shall be released on bail of **Rs.1,00,000/- (Rupees One Lakh)** with **two sureties** of like amount to the satisfaction of learned **Chief Judicial Magistrate, Kamrup (Metro), Guwahati** subject to the following conditions-

(i) That the accused petitioner shall not leave the jurisdiction of the Court of learned Chief Judicial Magistrate, Kamrup (Metro), Guwahati without written permission of the said Court till investigation is completed;

(ii) *That the accused petitioner shall cooperate with the Investigating Officer as and when required;*

(iii) *That the accused petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Police Officer or the Court;*

(iv) *That the accused petitioner shall refrain from committing any offences similar to the one of which he is accused or suspected of commission;*

(v) *That out of the two sureties, one must be a government servant subject to verification of the relevant documents, if deemed necessary and after such verification, the learned Court below shall return the original documents retaining legible scanned copy thereof on record for future reference; and*

(vi) *That the accused/petitioner and his sureties shall produce their Voter Identity Card/ Passport/Permanent Residential Certificate, whatever is available at the time of submission of the bail bonds to be certified by the local Council Head for satisfaction of the learned Court below regarding their identity and address and then return the same retaining legible photocopy thereof on record for future reference.*

*Breach of any of the above conditions shall invite cancellation of the bail in accordance with law.*

*Return the case diary.*

*The bail application stands disposed of."*

Now by filing the instant interlocutory application, the accused applicant has prayed for modification of the order, dated 17.03.2023 on the grounds, *inter-alia* to meet the conditions of bail as extracted hereunder:

*"1. Release Applicant- Accused namely Sri Jo Na Thang ( Detained by the Respondent w.e.f 2 PM 5<sup>th</sup> February, 2023, Arrested at 4.20 PM on 6<sup>th</sup> February, 2023 and presently in JC with w.e.f 7<sup>th</sup> February, 2023 in the Central Jail Guwahati till date) to be enlarged on Default Bail as the Statutory Period as prescribed is over on 5<sup>th</sup> April, 2023.*

*2. Release Applicant- Accused arrested in connection with in **Customs Case No. 18/CL/IMP/AS/GAU/2022-23 Dt.5<sup>th</sup> Feb.'23 U/Sec.r 7 (1) (c)** of the Customs Act, 1962 also R/w provisions of Wildlife Protection Act. 1972 listed U/ Sched-II with same liable for confiscation U/Sec. 111(b) Custom Act, 62.*

*3. In the alternative modify the condition of Bail as levied by this Hon'ble Court vide Order Dt.17<sup>th</sup> March 2023 in BA No.1035/23 which was to provide Rs.1,00,000/- (Rupees One Lakhs Only), a very heavy amount for the unemployed Applicant-Accd with Two sureties of like amount to the satisfaction of Ld. CJM, Kamrup (M)*

*Guwahati & also directed that out of Two sureties, one must be a Government Servant:*

*4. In the alternative modify the condition of Bail as levied by this Hon'ble Court vide Order Dt.17<sup>th</sup> March 2023 in BA No.1035/23, to provide a PR Bond for an amount of Rs.20,000/- (Rupees Twenty Thousand Only) instead of Rs.1,00,000/- (Rupees One Lakh Only).*

*5. In the alternative modify the condition of Bail as levied by this Hon'ble Court vide Order Dt.17<sup>th</sup> March 2023 in BA No.1035/23 for a local surety with a Voter Identity Card/ Passport/Permanent Residential Certificate, whatever is available at the time of submission of the bail bonds to be certified by the local Council Head And to impose such terms & conditions as this Hon'ble Court may deem fit & reasonable qua Applicant-Accd Case as submitted hereinbefore & above....."*

Mr. SC Keyal, learned Standing Counsel Customs agreed to verify the bail bonds to be furnished by the accused applicant through the local Customs Office at Aizawl, Mizoram.

At this stage, Mr. PN Choudhury, learned Counsel for the accused applicant concurs with the submission made by Mr. Keyal.

Upon hearing the learned counsel of both sides, the prayer of the accused applicant is hereby allowed to the extent that the amount of bail bonds shall be **Rs. 50,000/- (Fifty Thousand)** only with 2(two) sureties and the bail bonds shall be subject to verification by the respondent/opposite party Customs Department as regards the permanent addresses etc. of the accused petitioner and the sureties and thereafter, to submit report to the learned trial Court below thereon .

Accordingly, the Surety amounts are reduced and conditions No. (v) and (vi) of the order of bail, dated 17.03.2023, are modified and waived respectively.

This order shall form part of the order, dated 17.03.2023, passed in the connected Bail Application No. 1035/2023.

The interlocutory application is disposed of.

**JUDGE**

**Comparing Assistant**