

Neutral Citation No.-2024:AHC-LKO:38186**Court No. - 21**

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 4783 of 2024

Applicant :- Harekrishna Parai

Opposite Party :- Union Of India Thru. Deptt. Of Revenue Intelligence Lko.

Counsel for Applicant :- Purnendu Chakravarty

Counsel for Opposite Party :- Digvijay Nath Dubey

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Hon'ble Jaspreet Singh,J.

1. Counter affidavit has been filed by the learned counsel appearing for respondent - Department of Revenue Intelligence, Lucknow which is taken on record.
2. Learned counsel for the applicant has also filed rejoinder affidavit to the said counter and has also filed a supplementary affidavit, after serving a copy on the learned counsel for the DRI and the same are taken on record.
3. Heard Shri Purnendu Chakravarty, learned counsel for the applicant and Shri Digvijay Nath Dubey, learned counsel for the respondent.
4. By means of the instant bail application under Section 439 Cr.P.C., the applicant seeks bail in respect of DRI Case No.6/2024, under Section 135 of the Customs Act, 1962, Police Station DRI, District Lucknow.
5. The facts as borne out from the record reveals that DRI received specific information and acting upon the same, it intercepted two persons namely Harekrishna Parai (the applicant) and the co-accused Lalmohan Panja on 20.02.2024 at around 09:20 PM in the Second AC Coach bearing No.A1 of Pushpak Express (Train No.12533) from Charbagh Railway Station, Lucknow and their baggage was searched. From their three Trolley Bags, 558.900 Grams of Gold of foreign origin valued at Rs.49,760,000/-

and cash in Indian Currency worth Rs.3,29,25,000/- is said to have been recovered. It was informed by the applicant that he and the other co-accused were travelling to Mumbai to deliver the above recovered gold and ornaments and cash currency to the owners namely Ramkrishna Parai and Laxman Parai.

6. Upon further questioning of the applicant and the co-accused Lalmohan Panja and follow up search conducted of a flat situated at Chowk, Lucknow additional gold of foreign origin measuring 7700.000 Grams valued at Rs.3,69,60,000/- was recovered from a godrej locker/Safe which was in the said flat.

7. It was further informed by the applicant and the co-accused Lalmohan Panja that another locker was at the residence of another co-accused namely Sumit Kumar Rastogi.

8. The DRI acting upon the aforesaid information also searched the house of Sumit Kumar Rastogi from where another locker was recovered. The key of the aforesaid locker was recovered from the personal search of the applicant. In the said locker, gold ornaments measuring 26500.000 grams valued at Rs.12,42,62,400/- was recovered.

9. As per the case of the prosecution, the gold pieces, gold ornaments so recovered was smuggled and is made from gold from foreign origin.

10. As per the seizure memo, dated 21.02.2024, the following items were recovered and seized:-

Sl No	Packages	Description of Goods	Quantity	Total Value of the Goods (In Rs.)	Identifying description
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1	One Plastic box wrapped with markeen and sealed with DRI Seal	Gold Bar cut pieces and Gold Ornaments of 18K without Hallmark and HUID	41.900	2,68,160/-	P-1
			517.000	24,81,600/-	
2	One Plastic box wrapped with markeen and sealed with DRI Seal	Gold Ornaments of 18K without Hallmark and HUID	7700.000	3,69,60,000/-	P-2
3	One Plastic box wrapped with markeen and sealed with DRI Seal	Gold Ornaments of 18K without Hallmark and HUID	26500.000	12,42,62,400/-	P-3
4	One Plastic box wrapped with markeen and sealed with DRI Seal	Indian Currency	29000 notes (Rs.500/- denomination)	1,45,00,000/-	P-4
5	1 Trolley Bag wrapped with markeen and sealed with DRI Seal	Indian Currency	21000 notes (Rs.500/- denomination)	1,05,00,000/-	P-5
6	1 Trolley Bag wrapped with markeen and sealed with DRI Seal	Indian Currency	15682 notes (Rs.500/- denomination)	78,41,000/-	P-6
			120 notes (Rs.200/- denomination)	24,000/-	
			600 notes (Rs.100/- denomination)	60,000/-	
7	1 Brown Envelope sealed with DRI Seal	Pouch of Plastic Polythene	-	NCV	P-7
8	1 Godrej Safe sealed with DRI Seal	Godrej Safe	-	NCV	P-8
9	One Plastic box wrapped with markeen and sealed with DRI Seal	Bunch of Keys	-	NCV	P-9
Total				19,68,97,160/-	

11. It is in the aforesaid context that the applicant and the co-accused Lalmohan Panja were apprehended and are in jail since 23.02.2024.

12. Shri Purnendu Chakravarty, learned counsel for the applicant has submitted that the applicant is not the owner of the aforesaid recovered items rather the applicant is an employee of M/s. Ram Laxman & Company which is owned by Shri Ramkrishna Jaladhar Parai. The applicant also works for another firm namely M/s. R.L. Jewels (owned by Laxman Chand Parai). The applicant is a goldsmith and also helps his employers in the routine office work. The applicant gets monthly salary and expenses. He is neither the owner of the said cash nor it belonged to him. It was only collected on behalf of his employer. The applicant was travelling with the items and the cash to be handed over to his employers at Mumbai.

13. It is further urged that the seized items and the cash at best belongs to the firms M/s. Ram Laxman & Company and M/s. R.L. Jewels and any amount which may be leviable as tax, penalty or any charges which may be leviable for any violation of the provisions of Section 137 of the Customs Act, 1962, the same can be charged and will be paid and moreover, the alleged offence under Section 137 of the Customs Act, 1962 is punishable upto 7 years and is compoundable under Section 137 of the Customs Act, 1962.

14. It has further been submitted that the DRI had even searched the premises of the employer in Thane in the State of Maharashtra on 21.02.2024 and nothing incriminating was found from the said search against the employer.

15. Another search was made by the DRI at the office premises of the employer where the gold ornaments are manufactured, prepared and designed by the goldsmith and yet again nothing incriminating was found against the employer.

16. It has further been submitted that Ramkrishna Parai, the person in control of the firm M/s. Ram Laxman & Company is a bonafide and genuine businessman who deals with jewellery trading.

17. Learned counsel for the applicant has further submitted that insofar as the present applicant is concerned, apart from the items recovered and seized, no further incriminating evidence or information could be elicited.

18. It has further been pointed out that flat situated in Chowk, Lucknow had been taken on rent by the employer and this was used for office purposes while dealing with its business associates/customers. The firm M/s. Ram Laxman & Company and M/s. R.L. Jewels, both are duly registered firms and they pay their taxes including the GST to the Government. Nothing could be found to indicate that the gold ornaments which were allegedly seized were made from gold of foreign origin. The allegation that the gold was smuggled from Nepal is absolutely incorrect and there is no credible or incriminating documents or statement in this regard.

19. It has also been argued by the learned counsel for the applicant that the employer of the applicant M/s. Ram Laxman & Company and M/s. R.L. Jewels admit and claim that the aforesaid cash as well as the gold items seized belonged to them and any duty, taxes or any penalty if leviable

will be paid by them.

20. Under such circumstances, the applicant cannot be charged for the offence of smuggling. The applicant does not have any criminal history and moreover the DRI has already filed their complaint before the Court along with necessary evidences and in such circumstances, the applicant is neither in a position to influence any witness or tamper with any evidence and this fact apart, the applicant has roots in the society and he undertakes that if granted bail, he shall not misuse the liberty rather he shall diligently participate in the trial.

21. Learned counsel for the applicant further urges that apart from self-incriminating statement of the applicant and the other co-accused in custody, no independent evidence has been collected nor brought on record by the DRI and in any case, the said statement is not admissible in law and for the aforesaid reasons the applicant is entitled to bail and moreso when another co-accused namely Sumit Kumar Rastogi has been granted bail.

22. Shri Digvijay Nath Dubey, learned counsel appearing for the DRI has vehemently opposed the bail application. So far as the facts are concerned, which have been noticed above, there is no dispute regarding the same, except the version of the competing parties.

23. Shri Dubey urged that the applicant was actively engaged in smuggling of golds of foreign origin and while the DRI acted upon specific information and apprehended the applicant and Lalmohan Panja the co-accused, which resulted in the seizure of gold pieces, gold ornaments as well as huge quantity of Indian currency in cash.

24. It has further been urged that the employers of the applicant have not been cooperating and despite summons, they have not appeared to get their statements recorded. In absence of any confirmation, apparently what looks is the fact that the applicant and the co-accused Lalmohan Panja were apprehended with such huge quantity of gold, gold ornaments and cash. No satisfactory answer could be given from where such quantity of cash was received. It has also not been indicated from whom the said cash was received in lieu of the gold ornaments sold. In such circumstances, apparently, the case under Section 135 of the Customs Act, 1962 is made out and as such the bail application deserves to be rejected.

25. The Court has heard learned counsel for the parties and also perused the material on record.

26. Apparently, the quantity of gold and gold ornaments and cash have been recovered and this fact is not disputed by the learned counsel for the applicant that the applicant and the co-accused Lalmohan Panja were in possession of the items recovered. Even though it is submitted that the said items belonged to the employer of the applicant but the fact remains that insofar as the recovery is concerned that in itself is not disputed.

27. It is also not disputed that the other co-accused namely Sumit Kumar Rastogi has been enlarged on bail by this Court by means of the order dated 03.04.2024. However, the distinguishing feature is that in the case of Sumit Kumar Rastogi, a locker was allegedly recovered from the house of the said co-accused Sumit Kumar Rastogi, but the key and the combination of opening the said locker was known and given by the applicant. This apparently indicates that the constructive possession was with the

applicant. The name of the other co-accused Sumit Kumar Rastogi surfaced on the statement of the co-accused i.e. the applicant and considering this aspect, the Court had enlarged the co-accused Sumit Kumar Rastogi on bail.

28. Insofar as the present applicant is concerned, it is *prima-facie* evident that huge quantity of cash, gold and gold ornaments were recovered. Whether the said gold or the gold ornaments have been made from the smuggled gold of foreign origin is a subject matter to be tested in trial.

29. The applicant is said to be the employee of M/s. Ram Laxman & Company and M/s. R.L. Jewels. Learned counsel for the applicant by referring to the supplementary affidavit filed today has drawn the attention of the Court to the statement of account of M/s. Ram Laxman & Company and M/s. R.L. Jewels to indicate that certain amounts has been transferred to the account of the applicant to buttress his submissions that the applicant was an employee of M/s. Ram Laxman & Company and M/s. R.L. Jewels.

30. This Court finds that the instant bail application has been moved by the applicant, who claims himself to be an employee of the firm and is shown to be an ordinary resident of Mumbai as he usually works in Mumbai. However, no document has been brought on record to indicate that the applicant is an ordinary resident of Mumbai. No identity document, no bank statement, no residence proof, lease document/rent agreement has been filed which could indicate that the applicant is a resident in Mumbai.

31. The bank statements which have been placed on record along with the supplementary affidavit are that of M/s. Ram Laxman & Company and

M/s. R.L. Jewels which apparently do not relate to the present applicant. From the said statements, an attempt has been made to indicate that there are certain entries which indicate payment of salary to the applicant.

32. From the perusal of the said statement all that can be seen is that there are certain random entries which is corresponding to the name of the applicant and allegedly the family members of the applicant but insofar as the payment of salary is concerned, there is no statement indicating the consistency and regularity of time and amount which is attached to the payment of salary.

33. The applicant in the memo of bail application has given his permanent address of West Bengal and as already noticed above, there is nothing which connects with sufficient particularity that the applicant has been regular employee of the said firms. Moreover, there are no documents which have been placed on record which could establish that apart from the applicant, there are others employees and their place of residence amongst other. Moreover, if the said two firms M/s. Ram Laxman & Company and M/s. R.L. Jewels were dealing in such scale of business as sought to be projected then there ought to have been better financial and taxation records available.

34. It is quite surprising that the applicant has filed the accounts statement of his employer firms but has not filed his own bank statement. At this stage, where the material brought on record is in a fluid state coupled with the absence of clear documentation indicating from whom the applicant received the salary and there are two separate firms of which the applicant states that he is an employee of both the firms, has also not

clearly explained nor as to the nature of the work performed by the applicant.

35. Moreover, there has been no clear statement or explanation given by the applicant that if at all he was authorized to collect the sale proceeds from various customers of his employer firm then who were the said customers of the firm, who had paid such large cash proceeds and in absence of any document/diary or some record regarding as to which customer paid how much, when and against what item sold by which of the two firms, it becomes doubtful regarding the stand taken by the applicant.

36. In absence of any such clear material, it cannot *prima-facie* be ascertained at this stage that the applicant was the employee and was sent by his employers to sell the ornaments/gold and collect cash toward the sale proceeds.

37. For the aforesaid reasons, *prima-facie*, complicity of the applicant is evident and at this stage and this Court is not inclined to enlarge the applicant on bail. Consequently, the bail application of the applicant Harekrishna Paria is **rejected**.

38. The trial Court is directed to expedite the trial and the prosecution shall also ensure that it shall not take any unnecessary adjournments with an endeavour that the trial is concluded as expeditiously as possible.

Order Date :- 14.05.2024

Rakesh/-