

Court No. - 16

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 6142 of 2024

Applicant :- Mahtab Alam

Opposite Party :- Union Of India Thru. Senior Intelligence Officer
Directorate Of Revenue, Intelligence Lko.

Counsel for Applicant :- Keshav Prasad

Counsel for Opposite Party :- Digvijay Nath Dubey

Hon'ble Karunesh Singh Pawar,J.

Heard learned counsel for the applicant, Shri Digvijay Nath Dubey, learned counsel for DRI and perused the record.

The present bail application has been filed by accused-applicant seeking bail in Case No.20 of 2023, under Section 135 of Customs Act, P.S. DRI, District Lucknow.

Prosecution case as per the recovery memo is that on the basis of secret information, DRI officers on 17.10.2023 at the CCSI Airport, Lucknow arrested four accused Mahtab Alam, Abdul Rahman, Ashiq and Ajay Kumar. During personal search in presence of magistrate, foreign origin gold total 12 bars weighing 2441.500 gms has been recovered. The market price of the said gold is Rs.1,49,90,810/-. This gold was concealed in Mixer and wheels of the trolley bag. The arrested persons could not produce any valid document to claim the recovered gold.

Learned counsel for the applicant submits that alleged recovery from the applicant is 583 gm out of total 2441.500 gm of gold. The valuation of the recovered gold from the applicant is less than Rs.50,00,000/-. He submits that mere restriction on import of gold does not become prohibited goods in terms of Section 2(33) of Customs Act.

It is submitted that since the value of recovered gold from the applicant is less than Rs.50,00,000/- therefore, in view of Section 104 read with Section 135 of Customs Act offence is bailable. The combined gold recovered from the possession of all the accused persons cannot be considered while considering the bail application of the applicant.

The co-accused Ashiq has been granted bail by this Court vide order dated 18.9.2024 passed in Bail No.2796 of 2024

It is next submitted that if the market price of the gold exceeds Rs.1,00,00,000/- (rupees one crore) only then the accused can be punished with imprisonment for a term which may extend to

seven years along with fine as per Section 135 of the Customs Act.

It is also submitted that as per Section 104 sub-section 7 of Customs Act all other offences are bailable except provided in sub-section 6 of Section 104 Customs Act.

It is submitted that import of gold is not prohibited but restricted subject to prescribe payment of duty thus, alleged gold is not prohibited goods under Section 2(33) of the Customs Act in view of judgment of Commissioner of Customs vs. Atul Automation Private Limited reported in [(2019) 3 SCC 539]. He submits that offence committed by the applicant is bailable one , maximum punishment is three years. Applicant is languishing in jail since 18.10.2023.

Shri Digvijay Nath Dubey, learned counsel for DRI has opposed the contention and submits that applicant has been caught red handed however, does not dispute the fact that offence is bailable.

Perused the record.

On due consideration to the submissions advanced, judgment of Supreme Court passed in Commissioner of Customs' case (supra) so also the fact that applicant is in jail since 18.10.2023 and considering the total sentence this Court is of the view that applicant has already incarcerated enough, the co-accused Ashiq has been granted bail by this Court vide order dated 18.9.2024 passed in Bail No.2796 of 2024 without expressing any opinion on merits of the case, I find it to be a fit case for enlarging the applicant on bail.

Accordingly, the bail application is allowed.

Let the applicant Mahtab Alam be released on bail in aforesaid case crime number subject to his furnishing a personal bond and two reliable sureties each in the like amount to the satisfaction of the trial court concerned with the following conditions:

(i) The applicant will not tamper with the evidence during the trial.

(ii) The applicant will not pressurize/ intimidate the prosecution witness.

(iii) The applicant 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 Court or to any police officer or tamper with the evidence.

(iv) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(v) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(vi) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

Order Date :- 18.12.2024

kkb/