

Court No. - 15

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10071 of 2024

Applicant :- Suresh Chandra Gupta

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

Counsel for Applicant :- Anil Kumar Tiwari, Abhishek Dwivedi, Akhilendra Pratap Singh, Atul Verma, Mohd Agha Haider Rizvi, Vinod Kumar Yadav

Counsel for Opposite Party :- Digvijay Nath Dubey, Siddhant Mishra

Hon'ble Shree Prakash Singh, J.

1. Heard learned counsel for the applicant and Mr. Siddhant Mishra, for the Directorate of Revenue Intelligence, Zonal Unit, Lucknow.
2. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail during the trial in D.R.I. Case No. 17 of 2024, under section 135 of the Customs Act, 1962, Police Station-D.R.I., District -Lucknow.
3. In nutshell, the case of the prosecution is that it was informed to the team of the D.R.I. that the applicant is carrying Nepal smuggled gold in a Toyota Innova Crysta Car bearing registration no. U.P. 53 CV 0904 and one another person namely, Ram Kesh is also sitting over there. Upon the aforesaid information, the car was intercepted at adjacent to Neebu Park, Lucknow and when the search was made, 5 K.G. gold in 30 pieces and jewellery weighing 783.780 grams were recovered from the possession of the applicant as well as another co-accused and when they were asked to show the license or the bills thereof, they stated that the gold and jewellery are of foreign origin as the same are smuggled from Nepal and total value of the same, which was valued by the authorized valuer, was found to be value of Rs. 4,07,68,675/-. After the such recovery, the recovery memo was

prepared and a case was registered by the D.R.I. vide D.R.I. Case No. 17 of 2024 under section 135 of the Customs Act, 1962(hereinafter, referred to as 'Act,1962'), Police Station-D.R.I., District-Lucknow.

4. It is contended by the learned counsel for the applicant that the applicant is innocent and has falsely been planted/implicated by the officials of the D.R.I. He submits that the applicant is a gold businessman and he has a gold shop at district-Gorakhpur, in the name and style of M/s Anuradha Jewellery Firms and the applicant has business terms with the jewellers at Lucknow, namely, Balaji Buliyen & Jewellers and Lal Ji Jewellers and he was coming for got make of the jewellery from the gold pieces, but, on baseless information that those pieces are the foreign origin gold and have been smuggled from Nepal, the D.R.I. officials intercepted and unlawfully recovered the gold and have shown it as if the same were the smuggled gold,but, infact, the alleged recovered gold and jewellery are of the applicant and that was never smuggled from abroad and that too, is not a foreign gold. He also submits that the gold and jewellery are of the applicant and he is not disowning the same as the gold and jewellery have been confiscated and the notice has been issued, but, unless the applicant is released on bail, he would not be in a position to properly response to the notice of the D.R.I., which was issued in pursuant to the confiscation proceedings.

5. It is argued that the recovered gold and jewellery from the car were seized while invoking the provisions of section 110 of the Act, 1962, whereas the provisions of sections 111 and 123 of the Act, have been violated. He added that the report prepared by the alleged valuer, has not been supplied to the applicant as per the

procedure prescribed and whether the valuer is authorized or not, it is also suspicious. He submits that without ascertaining the facts that the gold is in the category of 'Prohibited Goods' as is defined under section 2(33) of the Act, 1962, the D.R.I., proceeded in the matter, whereas the gold is not such a metal, which can all the time be said as a prohibited goods, but, at the same time, this can be a restricted item/goods. He also submitted that so far as the statement, which is said to be confessional statement of the applicant, is the result of threatening and coercion given by the D.R.I. officials to the applicant for facing with dire consequences and therefore, the statement given by the applicant is not of his own free will or without duress.

6. Further submission is that there is no evidence that the gold and jewellery in question are of foreign origin and are smuggled from foreign as the prosecution has prima-facie, failed to demonstrate any travel history of the applicant as well as any tracking report to the foreign country and therefore, the gold and jewellery, which are recovered from the possession of the applicant, cannot be termed as 'Prohibited Goods'. He also submits that except apart the confessional statement of the applicant, which was given under pressure and threat of D.R.I. officials, there is no other substantial evidence so as to corroborate the story of the prosecution.

7. Adding his arguments, he submits that the ingredients of section 135(b) of the Act, 1962, do not attract in the present matter and even the offence under section 135 (b) of the Act, 1962, is punishable of 7 years of imprisonment. He submits that the whole proceedings of recovery are not only violative of the provisions of the Act, 1962, but also, there is no material evidence collected or

adduced by the D.R.I. officials and the D.R.I. officials are trying to falsely implicate the applicant in the present matter.

8. He also submits that the applicant is owning/claiming the confiscated gold bars as well as the jewellery and while giving reply to the notice of the confiscation proceedings, he will prove that the gold and jewellery were not smuggled and there is no offence committed by him. He also emphasized that the investigation proceedings have been completed and the complaint case has been instituted by the D.R.I. and therefore, there is no chance open for the applicant/accused to tamper the evidences or to threaten the witnesses if any.

9. Concluding his arguments, he submits that the applicant is a law abiding citizen and he would cooperate in the trial proceedings and he undertakes that he will not abscond during the trial and would not tamper the prosecution evidence. He also submits that the applicant has no previous criminal history as is mentioned in paragraph no. 21 of the affidavit filed in support of the bail application and he is actually a businessman and no offence has been committed by him and his act can be said to be irregular or violative of some provisions, but, there is no intent to commit any offence and the applicant is languishing in jail since 21-08-2024. He further submits that the applicant undertakes that in case, he is granted bail, he will not misuse the liberty of the same and would cooperate in the trial proceedings. Therefore, submission is that the applicant may be released on bail.

10. Per contra, learned counsel appearing for the D.R.I. has vehemently opposed the abovenoted submissions and argued that the D.R.I. officials had caught red-handed the applicant near Neebu

Park, Lucknow at 12.45 P.M. and recovered huge quantity of foreign origin gold and jewellery from cavity of the car which was being driven by the applicant. Subsequently, the statement of the accused/applicant was recorded under section 108 of the Act, 1962, wherein he has specifically stated that the gold and jewellery were unlawfully imported from Nepal and therefore, the burden of proof would lie upon the applicant so as to prove that the prohibited recovered goods were not smuggled. He next submits that the Act, 1962 is an special Act and the statement recorded under section 108 of the Act, 1962, is distinct from the statement recorded by the police officer under the provisions of the Cr.P.C.

11. He argued that the statement of the jewellers at Lucknow were also recorded, who denied that there was any conversation with the applicant regarding any make or preparation of jewellery from the gold, which were being fetched by the applicant. He submits that time and again, Hon'ble Apex Court has considered the economic offences serious and distinct from the other nature of the offences as there is a worst impact over the society and those have deep-rooted conspiracies and these are not the offences, which are said to be committed in a sudden provocation of peaked moments, but, it is committed with a great criminal design for profit to such accused, which ruins the economy of the state and therefore, such offences are declared as class apart from the other crimes.

12. He further submits that section 2(33) of the Act, 1962, defines the category of 'Prohibited Goods' and the recovered foreign origin gold for which no lawful paper could be shown, comes under the abovesaid category and there is no reason to believe that the gold is of the

applicant/accused and the same was being carried out in relation with some business transactions.

13. He has also placed reliance on the Judgments of the Hon'ble Apex Court rendered in the case of *Percy Rustomji Basta Vs. The State of Maharashtra*, reported in AIR 1971 SC, 1087, *Naresh J. Sukhawani Vs. Union of India*, reported in AIR 1996, SC 522 and *State of Gujarat Vs. Mohanlal Jitamalji Porwal and Another* reported in AIR 1987, SC 1321 and submitted that the case of the applicant is covered with the abovenoted Judgments.

14. Referring the aforesaid Judgments, he submits that repeatedly, it has been held by the Hon'ble Apex Court that strict parameter is to be adopted, while considering the bail of economic offence cases as there is a potential risk to the society and while granting the bail, the nature and gravity of the offence, likelihood of flight risk, risk of tampering with evidences of witnesses, repeated offenders or habitual criminals, danger to society or the victim must be taken into consideration. So far as the present case is concerned, a huge quantity of gold and the other jewellery of foreign origin have been recovered and the statement of the accused/applicant under section 108 of the Act, 1962, is recorded, which is admissible under the provisions of sections 123, 135(1)(2)(b) of the Act, 1962, therefore, the applicant/accused is not entitled for bail, thus, the bail application of the applicant may be rejected.

15. Having heard learned counsel for the parties and after perusal of material placed on records, it transpires that on receiving an information, the D.R.I. officials intercepted the Toyota Innova Crysta Car bearing registration no. U.P. 53 CV 0904, which was tallying with the information received and arrested the applicant including one Ramkesh,

whereupon, recovered 5 K.G. gold and 783.780 grams of gold jewellery.

16. It is the case of the D.R.I. that when the license/receipt was sought, the applicant was failed to produce the same and therefore, treating it as a foreign origin gold, those gold and jewellery were confiscated and the applicant and the other co-accused person have been sent to jail. Thus, it is nowhere said that as to how the D.R.I. officials came to the conclusion that the gold is of foreign origin as the gold and jewellery were not stamped in the name and style of any foreign country nor there is any satisfaction recorded on the basis of any evidence that those are of foreign origin.

17. Further it has also been noticed by this court that even after the investigation is completed, the D.R.I. officials have failed to show any travel history of the applicant as well as they also failed to demonstrate any tracking report to the foreign country and even the name of any person or agency, sitting at foreign could not be connected.

18. The 'Prohibited Goods' are defined in the Act, 1962 and that is distinct from the restricted goods and except apart the confessional statement of the applicant, which is allegedly given under coercion, there seems to be no evidence so as to show that the gold and jewellery, which are said to be recovered, are of the foreign origin and therefore, those will not come under the definition of 'prohibited goods'.

19. So far as the the argument placed by the learned counsel for the D.R.I. regarding the presumption of the statement recorded under section 108 of the Act, 1962, is concerned, it is right to say that the Act, 1962, being the Special Act, is on the different pedestal as the statement recorded under section 108 of the Act, is not at par

with the statement recorded by the police officer under section 161 of Cr.P.C., but, at the same time, the statement recorded under section 108 of the Act, is not enough to be a strong evidence, unless the same is corroborated with other evidences. Infact, this cannot be the intent of the legislature as if the statement of an accused recorded section 108 of the Act, would be the sole ground for conviction. If it is treated so the same would infringed the fundamental rights as are enshrined under the Constitution of India, 1950.

20. This court is also aware of the Judgment rendered in the case of Union of India Vs. Kisan Ratan Singh and Others, reported in (2020) SCC Online Bom 39, wherein it has been held that if the confession recorded under section 108 of the Act, is sufficient to convict the accused, what is the need of other evidences like Panchnama etc. to be recorded and therefore, it has been held that the statement in isolation, does not warrant conviction, more particularly, when it is retracted with plea of coercion.

21. In the present case also, it has been argued by the learned counsel for the applicant that the statement of the applicant under section 108 of the Act, has been recorded under coercion and prima-facie, the prosecution has failed to corroborate those statement with other evidences.

22. So far as the statements of the other jewellers, to whom the aforesaid gold and jewellery were to be given for make of the jewellery, recorded by the D.R.I. officials is concerned, and it is the natural consequence that if an agency like D.R.I. is intercepting someone, the consequence is that the person sitting at another end, would not accept any kind of statement given by such persons, who were arrested by the D.R.I. and thus, this cannot be a strong evidence in this matter.

23. This court has also noticed the fact that there is no independent public eye witness of the alleged recovery and it has not been denied that the applicant is not a businessman of gold bar and jewellery at Gorakhpur city, wherein his firm is working in the name of M/s Anuradha Jewellery Firms. Had it been a case that the applicant was nowhere involved in business of the jewellery, then generally, there cannot be any probability that he was naturally having the gold and jewellery for its make of jewellery and that too, in a city like Lucknow, not to the other places, where there can be no connection of make of jewellery.

24. Further, the applicant has owned the recovered gold and jewellery and it is a natural course that if he could be released, he can very well take defence before the D.R.I. officials in confiscation proceedings and thereafter, before the trial court, while collecting his documents etc. The D.R.I. has completed the investigation and now, a complaint case has been registered and thus, prima-facie, there seems to be no chance that the applicant would not cooperate in the investigation proceedings or would tamper the evidences. Further the applicant is in jail since 21-08-2024 and it is stated that he is a law abiding citizen and there is no previous criminal history of the applicant as is specifically mentioned in paragraph no. 21 of the affidavit filed in support of the bail application.

25. The applicant has also undertaken that he will not misuse the liberty of bail if granted and would cooperate in the trial proceedings.

26. Considering the submissions of learned counsel of both sides, nature of accusation and severity of punishment in case of conviction, nature of supporting evidence, prima facie satisfaction of the Court in support of the charge,

reformatory theory of punishment and considering larger mandate of the Article 21 of the Constitution of India and, without expressing any view on the merits of the case, I find it to be a fit case of bail.

27. Let the applicant-**Suresh Chandra Gupta**, involved in the aforementioned crime be released on bail, on his furnishing a personal bond and two sureties each in the like amount, to the satisfaction of the court concerned, with the following conditions:-

(1) The applicant shall not tamper with the prosecution evidence by intimidating/ pressurizing the witnesses, or otherwise during the investigation or trial;

(2) 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. He 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;

(3) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C.; and

(4) 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, the trial court shall initiate proceedings against him, in accordance with law under Section 174-A of the

Indian Penal Code.

The identity, status and residential proof of sureties will be verified by the court concerned and in case of breach of any of the above conditions, the court below shall be at liberty to cancel the bail and send the applicant to prison.

It is clarified that the observations made in this order are strictly confined to the disposal of this bail application and must not be construed to have any reflection on the merits of the case.

Order Date :- 3.12.2024

AKS