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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on: 10th July, 2015

\+ CRL.M.C. 2577/2015

DIRECTORATE OF REVENUE INTELLIGENCE ..... Petitioner

Represented by: Mr.Satish Aggarwala, Advocate.

Versus

GUO ZHISHENG & ANR ..... Respondents

Represented by: Mr. Pallav Shisodhia, Sr. Advocate with Mr. A. Raj Narayanan, Adv.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

CRL.M.C. 2577/2015

1. Vide order dated 30.06.2015, this Court passed the order as under:-

> "1. Vide the present petition, petitioner seeks directions thereby setting aside the order dated 29.06.2015 passed in cases titled as DRI v. Guo-Zhisheng and DRI v. Jiang-Xichao.
>
> 2. It is averred in the instant petition that Officers of Directorate of Revenue Intelligence, Delhi Zone Unit, New Delhi had recovered and seized six Gold bars of

999.9 purity collectively weighing 6 Kg. from respondent no.1 who arrived at Terminal-3 of IGI Airport, New Delhi from Hong-Kong by Cathay Pacific Flight CX-695 on 10.06.2015 at 20.55 hours along with respondent no. 2. Their respective statements under Section 108 of the Customs Act, 1962 were recorded on 11.06.2015, wherein they admitted that they have brought these six Gold bars of 1 Kg. each concealing inside the four packets of fake mobile phones / power banks for the purpose of smuggling through green channel without declaring the same to the custom authorities. Thereafter, both the respondents have filed bail applications, however, the same were dismissed on 18.06.2015.

3. Thereafter, respondents moved second bail applications on 24.06.2015, which were accepted and they were granted bail on 29.06.2015.

4. Mr. Satish Aggarwal, ld. Counsel appearing on behalf of the petitioner submits that there was no change of circumstances from 18.06.2015 till 29.06.2015, when the respondents were granted bail. The ld. Trial Judge has wrongly noted that the investigation is complete and the petitioner does not require any custodial investigation. Whereas in reply to the application dated 24.06.2015, the petitioner has specifically stated that enquiries are on and in fancy.

5. Mr. Aggarwal further submits that whether the respondents have any link in India for smuggling purposes or they are involved in previous smuggling activities, this aspect can be ascertained only when they are in judicial custody. Moreover, they are foreign nationals and if they are released on bail, there is every possibility of fleeing from India.

6. Moreover, reply to the application dated 24.06.2015 reveals that importing of the Gold is not

> allowed and the respondents have smuggled the Gold without declaring the same and thus involved in smuggling activities."

2. By recording the aforesaid submissions made by learned counsel appearing on behalf of the petitioner/Department, Mr. Satish Aggarwala, this Court stayed the order dated 29.06.2015 and the petition was directed to be listed on 17.07.2015, after serving notice upon the respondents. In the meanwhile, respondents preferred an application being Crl. M.A. No. 9399/2015 seeking eviction of the stay order dated 30.06.2015 granted by this Court. Thereafter, reply to that application has been filed by the petitioner. With the consent of the counsels for the parties, the matter is taken up for final disposal.

3. Mr. Satish Aggarwala, learned counsel appearing on behalf of the petitioner/Department, while referring to his reply submits that the Department has assured this Court expeditious conclusion of the enquiry/investigation, filing of the complaint and producing prosecution witnesses on day to day basis. No adjournment shall be sought by the prosecution. Moreover, the respondents had not cooperated with the investigating agency. Investigation is still pending. Respondent no.2, inter alia, admitted that he had been smuggling gold earlier. During enquiries under section 108 of the Customs Act, 1962, he did not furnish the particulars of Indian national, in Hon Kong, for whom he had been smuggling gold into India. He also did not disclose the recipients/s of smuggled gold in India.

4. Learned counsel for the petitioner further submits that before learned ACMM, the petitioner relied upon the case of ***Robert Lendi vs. The Collector of Customs and another*** ***1987 Crl. L. J. 55*** wherein this Court held as under:-

> "22. It was next urged by Mr. Mehta that the even if a distinction is recognised between the 'Enquiry' and 'Trial' the petitioner was entitled to grant of bail, as the first date fixed for taking evidence in the case was 17th of February 1986 and that since sixty days' period has expired the petitioner should be released on bail. We have given our anxious consideration to the contention of Mr. Mehta. The learned A.C.M.M. has refused bail on the ground that the case against the petitioner is a serious one involving smuggling of gold and since the petitioner is a foreigner and has no fixed residence in India there is likelihood of this jumping the bail. We do not find anything wrong in the reasons given by the learned Magistrate for refusing to grant bail. We may, however, additionally state that on a perusal of the copy of the order sheet, right from 17-2-1986 onwards, it is abundantly clear that the delay in the trial of the case against the petitioner has mostly been caused due to the conduct of the defense. In that view of the matter and in the light of the reasons given by the learned A.C.M.M. for refusing bail, we are of the opinion that the petitioner cannot be granted bail."

5. Learned counsel further submitted that gold is a prohibited item. Gold cannot be imported without the permission of the Reserve Bank of India and the Central Government. The respondents are foreign nationals. They are not Indian nationals and does not come under the definition of 'eligible passenger' as per notification No.3/2012-Customs dated 16.01.2012. Therefore,

smuggling of gold by the respondents is a heinous crime and it has to be dealt in a different way.

6. Mr.Aggarwal further submits, in the impugned order dated 29.06.2015, the learned trial court relied upon the case of ***Anil Mahajan vs. Commissioner of Customs & Anr, 2000 III AD Delhi 369*** wherein the accused remained in judicial custody for six months and thereafter released on bail. In the present case, the respondents have brought six bricks of gold. They were intercepted at T3, IGI Airport, New Delhi. The goods have been seized and liable to be confiscated absolutely. Investigation in this matter is going on. Therefore, the impugned order passed by the learned trial court deserves to be set aside.

7. Learned counsel for the petitioner further submitted that first bail application of the respondents was dismissed on 18.06.2015. Therefore, there was no change of circumstances for moving the second bail application and granting bail.

8. The fact remains that the respondents were intercepted on 11.06.2015. They were produced before the trial court and sent to judicial custody. On 26.06.2015, the judicial custody of the respondents was extended till 10.07.2015.

9. It is important to mention here that as per Chapter 71 of Classifications of Export & Import Items (with Customs Tariff Rates & Exemptions 2015-20) under Notes in clause 4 (A) it is prescribed that "precious metal" meats silver, gold and platinum.

The duty upon the said metals is 24.463% and policy on the said metal is free to import. The gold is not banned to be imported in India, but it comes under the restricted items which can be imported only with certain conditions and under policy which is obviously not available to the respondents. Therefore, no doubt, the seized goods are liable for confiscation, penalty and to be dealt under the Customs Act. By granting bail, the learned trial court has not discharged the respondents from the case. Simply because they are foreigners cannot be kept detained in judicial custody if they are entitled to be released on bail.

10. Mr. Aggarwala heavily relied upon the decision of this Court in the case of ***Robert Lendi (supra).*** The said case relates to the year 1987. In those days, import and export policies were not liberalised. About 28 years have passed. It is not in dispute that gold can be imported, but with some conditions, i.e., by Indian nationals. The accused are foreign nationals. The goods have been seized from them and they are in judicial custody. Admittedly, section 108 statement has also been recorded vide order dated 09.07.2015. The petitioner/Department was directed to produce the original case file to see whether the petitioner has taken any steps to find out the linkage of the respondents to any Indian national for smuggling purposes. After perusal of the case file, it appears that no steps have been taken and the complaint against the respondents has still not been filed. If the present case is of serious nature, as claimed by the petitioner, why steps have not been taken to find out

any previous visit, their link in India? Simply claiming that the respondents are foreign nationals, should not be released on bail, is without basis. Moreover, the Trial Court has imposed conditions on the respondents as under:

> "1. That the applicant / accused shall not leave the country without prior permission of the Court.
>
> 2. That the applicant / accused shall not try to tamper or tamper the prosecution witnesses in any manner.
>
> 3. That the applicant / accused shall join the investigation as and when required by the IO/Department."

11. Therefore, in view of the above, I find no discrepancy in the order dated 29.06.2015 passed by ld. Trial court.

12. Accordingly, the petition is dismissed.

13. However, keeping in view the facts and circumstances of this case, I further direct the respondents to surrender their pass-ports before the Trial Court.

14. The learned trial court is at liberty to release the respondents on the same terms and conditions as imposed vide its order dated 29.06.2015 and by this Court.

15. A copy of this order be given dasti to the counsels for the parties.

16. The next date fixed 17.07.2015 stands cancelled.

<u>Crl. M.A. 9193/2015 & Crl. M.A. 9399/2015</u>

Dismissed as infructuos.

SURESH KAIT, J

JULY 10, 2015
RS