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

+ W.P.(CRL) 2605/2017

MOHD.SADIQ Petitioner
Through: Mr.Mukesh Gupta, Adv.

versus

COMMISSIONER OF CUSTOMS & ORS Respondents
Through: Mr.Amit Bansal with Mr.Akhil
Kulshres Jha, Adv.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

% **10.11.2017**

Crl.M.A.No.14903/2017 (Exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(CRL) 2605/2017

The petitioner seeks release of the FDR dated 22.06.2013 issued by State Bank of India for the amount of Rs.1 lakh, which was tendered by him as surety for one Mohd.Jawaid, who was intercepted by the Customs officers at the IGI Airport for being in possession of gold weighing 699.84 gms. (valued at Rs.17,69,691). The petitioner, as stated earlier, stood as surety for grant of bail to the aforesaid Mohd. Jawaid.

The adjudicatory proceedings against Mohd.Jawaid, has been concluded. The gold which was seized, has been confiscated by order dated 13.06.2014 and a penalty of Rs. 1.80 lakhs has been imposed.

Mr.Bansal, learned counsel appearing for the Customs has informed this Court that the penalty has not been paid and the gold articles stand confiscated. He further submits that the criminal prosecution against Md. Jawaid (noticee) is in contemplation.

Mr.Gupta, learned counsel for the petitioner however submits that any criminal prosecution against the noticee would only be a separate and distinct proceeding where the Custom Department would not be entitled to hold back the surety which was given by the petitioner for the appearance of the noticee during the adjudication.

Since the adjudicatory proceedings are over and the gold articles in possession of Mohd.Jawaid (the noticee) have been confiscated, there would be no justification for holding back of the surety/FDR of the petitioner.

The competent authority is, therefore, directed to release the surety/FDR in the event of the petitioner approaching the competent authority within a period of four weeks from today. The competent authority shall, only after being satisfied regarding the identity of the petitioner, release the FDR in his favour and shall also obtain an endorsement regarding the petitioner having received the FDR.

The petition stands disposed of accordingly.

Dasti.

ASHUTOSH KUMAR, J

NOVEMBER 10, 2017

Bisht