IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.891 of 2021

Arising Out of PS. Case No.-393 Year-2019 Thana- KOTWALI District- Patna

==

Arvind Kumar S/o Late Tribhuwan Prasad Gupta Resident of 52 Miss Mandal Compound, Opposite Rameshwaram Apartment, Boring Road, P.O.- G.P.O., P.S.- Biddha Colony, Distt- Patna.

... ... Appellant

Versus

1. The State Of Bihar Through The Principal Secretary Excise Department Bihar
2. The State Of Bihar Through The District Magistrate Cum District Election Officer, Patna. Bihar
3. The Superintendent Of Police, District- Patna. Bihar
4. The Junior Engineer Cum Flaying Squad Cum Static Surveillance Team, Distt- Patna. Bihar

... ... Respondents

==

Appearance :

For the Appellant/s : Mr.Krishna Mohan Mishra

For the Respondent/s : Mr.A.G.

==

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL ORDER

6 23-03-2022 Heard learned counsel for the appellant and the State.

Instant memo of appeal has been filed to set aside order passed by the Special Judge, Excise Act, Patna in Special Case No. 4334 of 2019 dated 5.11.2020 and also for direction to the respondent authorities to release the jewellary weighing 3.110 kilograms without furnishing bank guarantee.

Learned counsel for the appellant submits that at paragraph 3 of the said order dated 5.11.2022, appellant has been directed to deposit bank guarantee equal to the value of jewellery of Rs.79,40,000/- as well as indemnity bond of equal amount for release of jewellery. It has further been ordered that the bank guarantee shall be renewed on every expiry of time, otherwise the State of Bihar was given liberty to en-cash the bank guarantee as above.

Learned counsel for the appellant submits that the appellant is whole seller of jewelary and in fact his employee Sanjay Kumar had purchased the said jewellery from a shop at New Delhi against tax invoice for the appellant on 2.5.2019 and had returned to Patna where he was arrested by the police allegedly with a 750 ml. wine bottle. Purchase invoice are contained in Annexure 2 to the memo of appeal. It is the case of the appellant that the seizure of jewellery is illegal and against the provisions of the Excise Act. Therefore, it cannot be seized and retained. Furthermore, the jewellery seized is business stock of the appellant's shop and appellant is not in a financial condition to carry out condition for release of his jewellery in a form of bank guarantee equal to the value of jewellery of Rs.79,40,000/- as well as indemnity bond of equal amount for release of jewellery. In paragraph 5 of the supplementary affidavit, appellant has averred that the police as well as the Income Tax department, in their respective reports, have stated that they have no objection if said seized jewellery is released. As per paragraph 7 of the supplementary affidavit, appellant is read to furnish indemnity bond of Rs.79,40,000/- as well as personal guarantee at the time of release of jewellery with condition that he will produce the same as and when required by the Court.

Considering the facts and circumstances of the case as also the submissions of the appellant, order dated 5.11.2020 is modified to the extent that at the time of release of the aforesaid jewellery in favour of the appellant, the appellant would furnish indemnity bond of Rs.79,40,000/- as well as personal guarantee with condition that he will produce the same before the Court below as and when required by it.

Appeal stands allowed in the aforesaid terms.

(Prabhat Kumar Singh, J)

shashi/-

U		T	