IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.8751 of 2023

Arising Out of PS. Case No.-361 Year-2022 Thana- ECONOMIC OFFENCES, BIHAR District- Patna

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Sushil Kumar Raj @ Sonu S/O Lallan Prasad Resident of Village- Mochi Tola, Basti More, P.S.- Sasaram Sadar, Town, Sasaram, District- Rohtas.

... ... Petitioner/s

Versus

1. The Union Of India Through The Principal Commissioner Customs, C.R. Building, B.C. Patel Path Patna New Delhi
2. The Deputy Director Of Revenue Intelligence C.R. Building B.C. Patel Path, Patna Bihar
3. The Director Revenue Intelligence C.R. Building B.C. Patel Path, Patna. Bihar

... ... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Akhilesh Dutta Verma
For the Opposite Party/s : Mr.K.N.Singh (A.D.S.G)

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL ORDER

7 20-09-2023 Heard counsel for the petitioner, counsel for Opposite Party nos. 2 and 3 and the State.

2. The petitioner apprehends his arrest in a case registered for the offences punishable under Sections 135(1)(a) and 135(1)(b) for violation of section 7, 46 and 47 of the Customs Act, 1962 read with section 3(2) of the Foreign Trade (Development and Regulation) Act, 1992.

3. Prosecution case in brief is that on specific information a raid was conducted on 30.06.2022 at Gaya Railway Station and the DRI authorities of Patna apprehended three persons namely, (i) Vishal Kumar (ii) Ashish Raj and (iii)

Rajan Kumar Soni and 1982.340 Grams of worth Rs. 1,03,45,832/- were recovered from their possession. From possession of Vishal Kumar four pieces of Biscuits/Bullions of foreign origin gold were recovered, however, from possession of Ashish Raj seven pieces of Biscuits/Bullions of foreign origin gold were recovered and from possession of Rajan Kumar Soni two pieces of Biscuits/Bullions of foreign origin gold were recovered. It is further alleged that subsequently the statement of all the three apprehended persons were recorded under Section 108 of the Customs Act where they accepted their guilt and also disclosed the name of the respective recipients of the gold under seizure.

4. It is submitted that petitioner is not named in the FIR. Name of petitioner transpired in this case on the basis of confessional statement of co-accused Ashish Raj during course of investigation. Petitioner is owner of the shop namely, M/s S.K. Traders Madar Darwaza, Mohalla Navratan Bazar, Sasaram, Rohtas Pin-821115 having G.S.T Registration No. 10ARLPR2904G1Z vide Annexure- 2 to this petition. It is further submitted that petitioner is an income tax payer and regularly filing income tax return as *bona fide* tax payer and in support of the same he has annexed IT return filed by the

petitioner vide Annexure-3 series to this petition. Petitioner being owner of the shop namely, M/s S.K. Traders @ Soni Jewellers has purchased two lots of semi-finished gold jewels from one B.J. Jewellers of Tamil Nadu of worth Rs. 31,46,000/- vide tax invoice as well as Logistic Receiving Receipt dated 11.06.2022 of B.J. Jewellers. A copy of the tax invoice and logistic receiving Receipt dated 11.06.2022 of B.J. Jewellers are annexed as Annexure-4 and 4/A to this petition. It is relevant to mention here that in the present case seven (07) pieces of refined primary Gold Bullions/Biscuits weighing 787.420 Grams were allegedly seized by the DRI authorities on the ground that it is being smuggled from Bangladesh into India. However, such stand of the DRI authorities is absolutely improper and incorrect and merely based on assumption and presumption, as the seized seven pieces of Gold Bullions/Biscuits does not bear any mark/label of foreign origin. Moreover, the department did not prove that the goods were of foreign origin rather in light of the invoice issued by the registered firm the allegation made against the petitioner has got no leg to stand. It is further submitted that against arbitrary seizure of validly purchased gold the petitioner approached the learned Joint Commissioner Customs, Patna whereby he has been requested to release his Primary Gold weighing 787.420 Grams worth Rs. 41,09,546/- forthwith and in this regard, petitioner has filed release application on 01.08.2022 vide Annexure-8 to this petition. It is further submitted that value of the seized seven (07) pieces of Gold Biscuits/Bullions recovered from possession of the petitioner comes to Rs. 41,09,546/- only (serial no. 5 to 11 of the seizure list) which is obviously much less than Rs. One Crore. Therefore, as per the provisions laid down under Customs Act the offence itself is bailable, but the DRI authorities with a view to give different colour to this case, has issued only one composite seizure list against the recovery of 13 Biscuits/Bullions from possession of the three different persons and when the recipients of the said 13 Bullions are three different firms having separate GST numbers etc. then in that circumstance, three different cases of three different registered firms cannot be clubbed together. It is next submitted that in this case investigation is complete, chargesheet has already been submitted and cognizance has already been taken.

5. Counsel for Opposite party opposed the prayer for bail and submitted that on the confessional statement of co-accused, petitioner has been made accused in this case and they have committed the alleged offence. It is further submitted that

petitioner has cooked up a story that he purchased the semi-finished gold jewels vide invoice dated 11.06.2022 from M/s B.J. Jewellers of Tamil Nadu and the same were found little bit damaged during journey. The said gold jewels along with old scrap gold measuring 326.357 Grams of his stock were sent for refining to one M/s USP Gold & Silver Refinery, Gorakhpur, after refining, the said Gold and Silver Refinery Gorakhpur vide their two bills bearing number 50 and 51 dated 24.06.2022 made available total 815.001 Grams fine gold to the staff of the petitioner and the petitioner instructed this staff to proceed to Kolkata with 787.420 Grams of refined gold for the purpose of making jewelleries. When the staff of petitioner reached Kolkata he found the said shop closed, and immediately informed to the petitioner about it thereafter, petitioner directed his staff to return with the consignment and while he was returning back the, he was intercepted by the DRI authorities. It is further submitted that after investigation, follow-up inquiry, repeated summons have been issued to the petitioner, but petitioner did not appear and also not cooperated in investigation. Counsel further relies upon a Judgment in the case of **P. Chidambaram Vs. The E.D.,** reported in **2019(9) SCC24**.

6. Considering the submissions made on behalf of the

parties and materials available on record and the fact that chargesheet has already been submitted and cognizance has been taken coupled with the fact that petitioner claims clean antecedent, the petitioner above-named, in the event of his arrest/surrender before the court below within a period of six weeks from the date of receipt/production of a copy of this order, is directed to be enlarged on bail on furnishing bail bond of Rs. 10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of the learned Special Judge Economic Offences-cum-Sub-Judge I, Patna in connection with Economic Offence (Customs) Case No. 361(O) of 2022, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure with further conditions:-

(i) The petitioner shall co-operate in the trial and shall be properly represented on each and every date fixed by the court and shall remain physically present as directed by the Court and in the event of failure on two consecutive dates without sufficient reasons, his bail bond shall be liable to be cancelled by the court below.

(ii) If the petitioner tampers with the

evidence or the witnesses of the case, in that case, prosecution will be at liberty to move for cancellation of bail of the petitioner.

(Prabhat Kumar Singh, J)

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