IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.10627 of 2023

Arising Out of PS. Case No.-22 Year-2022 Thana- D.R.I District- Patna

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ANIL KATHURIA Son of Late Khyali Ram Kathuria Resident of C/o Jyoti Kathuria, D-Block, 5B, Trinity Garden, Near Hindustan Press, Post - Dhaiya, P.S.- Barwadda, District - Dhanbad, Jharkhand

... ... Petitioner/s

Versus

The Union of India through the Directorate of Revenue Intelligence, Patna Bihar

... ... Opposite Party/s

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Appearance :

For the Petitioner/s :	Mr. Ansul, Adv. Mr. Anuj Kumar, Adv.
For the Opposite Party/s :	Mr. K.N. Singh(A.S.G.) Mr. Anshuman Singh, Sr. S.C. (Customs)

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL ORDER

3 26-06-2023 Heard learned counsel for the petitioner and learned counsel appearing for the Directorate of Revenue Intelligence, Patna (for brevity "DRI").

The petitioner seeks bail in connection with Complaint Case No. 377(O) of 2022 arising out of DRI Patna Unit Case No. 22 of 2022-23 dated 10.12.2022 registered for the offence under Sections 135(1)(b) of the Customs Act, 1962.

The petitioner is alleged to have been apprehended having illegal possession of 2 kg of Gold bullion valued at Rs. 1,14,89,654/-

Learned counsel appearing for the petitioner submits that the petitioner, who is of clean antecedent, is innocent and has falsely been implicated in this case. He further submits that it appears from the F.I.R. and the seizure list, a bag containing 2 Kgs. of gold bullion are alleged to have been recovered from the possession of the petitioner and one another accused person. He further submits that the defense of the petitioner is that the alleged bag does not belong to him. He, however, further submits that there is non-compliance of the Section 100 of the Cr.P.C. He further submits that though the bag containing 2 kgs. of Gold bullion is alleged to have been shown that the same belong to the petitioner but nothing incriminating has been recovered from the exclusive possession of the petitioner which could be evident from the seizure list itself. The petitioner has no concern at all with the alleged recovery and not even a single material has surfaced against the petitioner that he is involved in illegal dealing of any prohibited articles. He further submits that the prosecution agency after investigation has submitted charge-sheet in this case against the petitioner and another co-accused.

He further contends that it is a case of complete denial though the statement of petitioner has been recorded before the prosecution agency in which petitioner appears to have confessed his guilt but the same does not have evidentiary value in the eye of law. Admittedly, a bag containing 2 kgs. of Gold bullion has been recovered from the train beneath the birth No. 40 of Coach No. A-1 of Siyaldah-Amritsar Jaliyawala Bagh Express on which the petitioner and his subordinate are boarding but the bag in question does not belong to the petitioner as because not a single belonging or any personal document showing ownership of the petitioner on the bag in question is recovered from the alleged bag despite that he has been made accused in this case reason best known to the prosecution agency. He further contends the petitioner happens to be a man of clean antecedent and a respectable citizen and not a single case of similar nature has been lodged against the petitioner prior to the present case and he has been languishing in custody since 10.12.2022 i.e. more than six months. Hence, the petitioner deserved to be enlarged on bail.

Learned counsel appearing for the DRI on the basis of material available on record vehemently opposed the prayer for bail of the petitioner. He has filed a counter affidavit in this case in which it is stated that the petitioner along with another were apprehended having unlawful possession of 2 Kgs. of Gold bullion concealed in the bag. It is also stated therein that statement of the petitioner has also been recorded under Section 108 of the Customs Act, in which he has admitted that the recovered bullion were brought from Bangladesh into India and the petitioner was unable to produce any chit of paper with respect to the alleged recovery. He further submits that all mandatory procedures prescribed under the Customs Act have been followed in accordance with law. He further submits that the petitioner has been apprehended under Section 104 of the Customs Act, 1962 after obtaining prior approval from the Pr. Additional Director General, DRI, Lucknow Zonal Unit and notice under Section 102 of the Customs Act has also been served to the petitioner.

Considering the facts and circumstances of the case and the fact that petitioner bears the clean antecedent and charge-sheet has been submitted in this case against the petitioner, let the, above named, petitioner be released on bail on furnishing bail bond of Rs. 10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Patna in connection with Complaint Case No. 377(o) of 2022 arising out of DRI Patna Unit Case No. 22 of 2022-23 with the following conditions:-

(1) 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 on his/her absence on two consecutive dates without sufficient reason, his/her bail bond shall be canceled by the Court below.

(2) If the petitioner tampers with the evidence or the witnesses, in that case, the prosecution will be at liberty to move for cancellation of bail.

And, further condition that the court below shall verify the criminal antecedent of the petitioner and in case at any stage, it is found that the petitioner has concealed his criminal antecedent, the court below shall take step for cancellation of bail bond of the petitioner. However, the acceptance of bail bonds in terms of the above-mentioned order shall not be delayed for purpose of or in the name of verification.

(Rajesh Kumar Verma, J)

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