IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.50146 of 2023

Arising Out of PS. Case No.-1 Year-2023 Thana- D.R.I District- Patna

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SANTOSH KUMAR GUPTA SON OF SHRI SHAYAMLAL GUPTA RESIDENT OF VILLAGE SATUABHAR, PO AND PS- KHAJNI, DISTT- GORAKHPUR, UTTAR PRADESH

... ... Petitioner/s

Versus

1. THE UNION OF INDIA THROUGH THE DEPUTY DIRECTOR, DRI, MALAYNIL BUDDHA COLONY PATNA, 800001 BIHAR
2. THE SENIOR INTELLIGENCE OFFICER, DRI, REGIONAL UNIT, PATNA BIHAR

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. S.D. Sanjay, Sr. Adv.
		Mr. Shri Prakash Tiwari
For the Opposite Party/s	:	Mr. Dr. K.N. Singh, ASG
For the UOI	:	Mr. Anshuman Singh, Adv. (DRI)

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

CAV ORDER

5 17-10-2023 Heard, Mr. S.D. Sanjay, learned senior counsel for the petitioner and Mr. Anshuman Singh, learned counsel for the Union of India through DRI.

The petitioner seeks bail in connection with Economic Offences P.S. Case No. 45(o) of 2023 arising out of Unit Case No. 01 of 2023 dated 26.04.2023 registered for the offence under Sections 135(1)(b) of the Customs Act, 1962.

According to the prosecution, on a secret information regarding consignment of foreign origin gold from New Jalpaiguri to Gorakhpur by train, the Intelligence

Officer, DRI, apprehended two persons from berth No. 23 of Coach B-6 of Train No. 15077 (Kamakhya -Gomati Nagar weekly express) on 26.04.2023 and on inquiry made by them, they disclosed their identity as Mahendra Kumar and Acchaibar Gupta, both are stated to be of Gorakhpur and simultaneously they admitted that they were carrying foreign origin gold smuggled from Myanmar to India via Manipur concealing them in their Trolley bags. On search, altogether 10 pieces of Gold billions of foreign origin total weighing 4996.150 grams valued to Rs. 3,05,26,476.50/- were recovered from their trolley bags and they failed to produce any valid paper. It is further alleged that the apprehended persons have disclosed that the Adharam Gupta and Santosh Kumar Gupts, who is petitioner herein, are the owner of the recovered gold.

Learned senior counsel appearing for the petitioner submits that the petitioner is innocent and has falsely been implicated in this case. He further submits that the petitioner has been made accused in this case on the disclosure of the apprehended persons i.e. Mahendra Kumar and Achhaibar Gupta, who were having possession of the gold in question. He further submits that the apprehended persons have stated that the alleged recovery belongs to Adharam Gupta and the petitioner and simultaneously, they stated that they have been directed by Adharam Gupta that gold bullions in question are to be delivered to the petitioner at Gorakhpur which shows the apprehended persons were acting upon the direction of Aharam Gupta and this petitioner has not played any role in commission of smuggling of the gold bullions.

He further submits that based on the confessional statements of the apprehended persons, DRI officials of Gorakhpur had conducted a raid on the premises of the petitioner but nothing incriminating has been recovered from his house. However, the DRI official took away the cash amount of Rs. 40,00000/- from the premises of the petitioner which was given to his wife Meera Devi by five different persons as per the agreement entered into with them and on bare perusal of the arrest memo, it is apparent that nothing has been recovered from the conscious possession of the petitioner. The investigation of the present case has already been completed and there is no chance of tampering with the evidences.

Learned senior counsel further contends that despite any recovery, the petitioner has been taken into custody by the DRI officials mere on bald disclosure of the persons apprehended on the spot which shows the high handedness of the DRI officials. Mere disclosure does not constitute an offence for prosecution of any person, more particularly, in absence of any substantive piece of evidence followed by the disclosure or confession with respect to the offence and, therefore, the prosecution of the petitioner in the present case is based on false implication and his further incarceration would not meet the ends of justice as he has been languishing in judicial custody since 27.04.2023 without no fault.

Reiterating the submission of false implication of the petitioner, learned senior counsel for the petitioner relied upon a decision rendered in the case of ***Mahdoom Bava versus Central Bureau of Investigation*** *reported in* ***2023 SCC Online SC 299.*** He further relied upon a judgment rendered in the case of ***Satender Kumar Antil Vs. Central Bureau of Investigation and Another*** *reported in* ***2022 SCC Online SC 825*** and submits that the object of bail is to secure the attendance of the accused at the trial and indisputably the bail is not to be withheld as punishment. He also submits that an accused person enjoys freedom would be in a much better position to look after his case and to properly defend himself, than if he was in custody.

In order to buttress his submission, he drawn the attention of this Court towards the various paragraphs of the aforesaid judgments, which are apposite to reproduce herein below.

> *"ECONOMIC OFFENSES (CATEGORY D)*
> *66. What is left for us now to discuss are the economic offences. The question for consideration is whether it should be treated as a class of its own or otherwise. This issue has already been dealt with by this Court in the case of P. Chidambaram vs. Directorate of Enforcement, (2020) 13 SCC 791, after taking note of the earlier decisions governing the field. The gravity of the offence, the object of the Special Act, and the attending circumstances are a few of the factors to be taken note of, along with the period of sentence. After all, an economic offence cannot be classified as such, as it may involve various activities and may differ from one case to another. Therefore, it is not advisable on the part of the court to categorize all the offences into one group and deny bail on that basis. Suffice it to state that law, as laid down in the following judgments, will govern the field:-*
> ***Precedents***
> *P. Chidambaram vs. Directorate of Enforcement, (2020) 13 SCC 791:*
> *23. Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced tha the basis jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same has*

gravity of the offence is an aspect which is required t be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of " grave offence" and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. <u>In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so.</u> Therefore, the underlining conclusion is that irrespective of the nature and gravity of Learned counsel appearing for the petitioner submits that earlier the prayer for bail of this petitioner had been rejected by this Court vide order dated 17.02.2020 passed in Cr. Misc. No. 62046 of 2019 with liberty to renew his prayer for bail after framing of charge. Now, charges have been framed in this, which is evident of from Annexure-3. The petitioner is rotting in judicial custody since17.06.2020., the precedent of another case alone will not be the basis for either grant of refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial.

<u>Sanjay Chandra v. CBI</u> (2012) 1 SCC 40:

39. Coming back to the facts of the present case, both the courts have refused the request for grant *of bail on two grounds: the primary ground is that the offence alleged against the accused persons is very serious involving deep-rooted planning in which, huge financial loss is caused to the State exchequer; the secondary ground is that of the possibility of the accused persons tampering with the witnesses. In the present case, the Learned counsel appearing for the petitioner submits that earlier the prayer for bail of this petitioner had been rejected by this Court vide order dated 17.02.2020 passed in Cr. Misc. No. 62046 of 2019 with liberty to renew his prayer for bail after framing of charge. Now, charges have been framed in this, which is evident of from Annexure-3. The petitioner is rotting in judicial custody since17.06.2020. is that of cheating and dishonestly inducing delivery of property and forgery for the purpose of cheating using as genuine a forged document. The punishment for the offence is imprisonment for a term which may extent to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the p arty may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration.*

40. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purpose of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructiely in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required.

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46. We are conscious of the fact that the accused

> *are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country. At the same tiem, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge-sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to ally the apprehension expressed by CBI.*"

On the other hand, learned counsel for the DRI (Union of India) vehemently opposed the prayer for bail of the petitioner and submits that the statement of the co-accused persons have been recorded under Section 108 of the Customs Act, 1962 and further the statement of the petitioner was recorded on 26.04.202 and 27.04.2023 under Section 108 of the Customs Act, 1962 wherein he has categorically stated that he worked for Shri Adharam Gupta and he has managed his business at Gorakhpur. He further submits that the statement of Adharam Gupta was also recorded on 04.05.2023 under the summons dated 27.04.2023 issued under Section 108 of the Customs Act, 1962 before the Senior Intelligence Officer, DRI, Kolkata, Zonal Unit wherein he has stated that he had come to Kolkata in the year 1996 and worked in a hotel for two years and subsequently moved to Bangkok where he lived for 21 years. He had further admitted that he was indulged in smuggling of foreign clothes and other articles from Thailand and selling the same in Kolkata. He further submits that the CDR of the petitioner suggest that he was regularly in touch with the accused persons as well as Adharam Gupta and other accused persons which constitute an offence against the petitioner punishable under Sections 135(1)(a) & 135(1)(b) of the Customs Act. He also submits that the petitioner carries one more case other than the present one. Hence, the petitioner does not deserve to be enlarge on bail.

Considering the facts and circumstances of the case and the fact that the nothing has been recovered from the house or possession of the petitioner and his name transpired in this case on the basis of disclosure made by the apprehended persons from the spot, let the, above named, petitioner be released on bail on furnishing bail bond of Rs. 10,0000/- (One Lakh) with two sureties of the like amount each to the satisfaction of learned Presiding Officer, Economic Offences Court, Patna in connection with Economic Offence P.S. Case No. 45(o) of 2023 arising out of Unit Case No. 01 of 2023 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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