IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.56714 of 2022

Arising Out of PS. Case No.-14 Year-2022 Thana- GOVERNMENT OFFICIAL COMP. District- Patna

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Ashish Raj S/O Mathura Prasad R/O Village- Siyanwak, P.S- Baghaila, Distt.- Rohtas, Bihar

... ... Petitioner/s

Versus

The Union Of India Through The Principal Commissioner Customs, C.R Building, B.C Patel Path, Path Bihar

... ... Opposite Party/s

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with

CRIMINAL MISCELLANEOUS No. 54440 of 2022

Arising Out of PS. Case No.-14 Year-2022 Thana- D.R.I District- Patna

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Rajan Kumar Soni Son Of Gopal Prasad Resident Of Village - Kajipura, P.S.- Sasaram, Distt.- Rohtas.

... ... Petitioner/s

Versus

1. The Union of India through the Principal Commissioner Customs, C.R Building, B.C Patel Path, Patna. Bihar
2. Deputy Director of Revenue Intelligence Regional Unit, Patna
3. Intelligence Officer , Directorate of Revenue Intelligence Regional Unit , Patna

... ... Opposite Party/s

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with

CRIMINAL MISCELLANEOUS No. 57452 of 2022

Arising Out of PS. Case No.-14 Year-2022 Thana- GOVERNMENT OFFICIAL COMP. District- Patna

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Vishal Kumar Son Of Indrachand Prasad Resident Of Mohalla- Mandai, P.S.- Sasaram, District- Rohtas

... ... Petitioner/s

Versus

1. The Union of India through the Principal Commissioner Customs, C.R Building, B.C Patel Path, Patna BIHAR
2. Deputy Director of Revenue Intelligence Regional Unit Patna

... ... Opposite Party/s

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Appearance :
(In CRIMINAL MISCELLANEOUS No. 56714 of 2022)
For the Petitioner/s : Mr. N.K. Agrawal, Sr. Adv
For the D.R.I : Mr. Ranvir Kumar, Sr. S.C
For the Customs : Mr. Anshuman Singh, Sr. S.C
(In CRIMINAL MISCELLANEOUS No. 54440 of 2022)
For the Petitioner/s : Mr. N.K. Agrawal, Sr. Adv
For the D.R.I : Mr. Ranvir Kumar, Sr. S.C
For the Customs : Mr. Anshuman Singh, Sr. S.C
(In CRIMINAL MISCELLANEOUS No. 57452 of 2022)
For the Petitioner/s : Mr. N.K. Agrawal, Sr. Adv
For the D.R.I : Mr. Ranvir Kumar, Sr. S.C
For the Customs : Mr. Anshuman Singh, Sr. S.C

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CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR

ORAL ORDER

7 23-02-2023 Heard learned senior counsel for the petitioners, learned senior counsel for the Union of India and learned senior counsel appearing on behalf of the Customs Department.

The petitioners are languishing in custody in a case registered for the offences punishable under Sections 135(1)(a), 135(1)(b) for violations of Sections 7, 46, 47 of the Customs Act, 1962 read with Sections 3(2) of the Foreign Trade (Development & Regulation) Act, 1992.

The prosecution story in nutshell is that on getting specific information, the D.R.I, Patna apprehended the petitioners at Gaya Railway Station from Coach No. S-3, Sealdah-Ajmer Express while they were coming from Kolkata on the charge of carrying smuggled gold from Bangladesh into India weighing 1982.340 grams for a value of Rs. 1,03,45,832/-. Accordingly, from the possession of petitioner/Ashish Raj, seven pieces, from the possession of petitioner/Vishal Kumar, four pieces and from the possession of petitioner/Rajan Kumar Soni, two pieces of gold Biscuits/Bullions were recovered. Subsequently, the statement of all the three apprehended accused persons were recorded under Section 108 of the Customs Act where they accepted their guilt and disclosed that said gold Biscuits/Bullions were smuggled from Dubai into India through Bangladesh and they also disclosed the names of the recipients of aforesaid gold Biscuits/Bullions.

It is submitted on behalf of the petitioners that petitioners are innocent and they have falsely been implicated in this case. It is further submitted that the petitioners had produced all the relevant papers/documents relating to the gold Biscuits/Bullions under seizure and apprised the authority that the said gold Biscuits/Bullions are refined form of validly purchased gold jewellary from the registered firms which fact is evident from the Tax Invoices issued in favour of the petitioners but the D.R.I Authority did not pay any heed and made seizure of the alleged gold Biscuits/Bullions collectively valued at Rs. 1,03,45,832/-. It is further submitted that for the purposes of refining the jewelleries purchased from HG Jewels, the petitioner proceeded for Kolkata by train, however, during journey the jewellary got damaged and for making new jewellary the damaged jewellaries has to be refined first as condition precedent before giving shape of any new ornaments which fact is amply from mere perusal of debite note for job work issued by R.K. Traders in favour of M/s Anant Gold & Silver Refinery dated. It is further submitted that the values of alleged gold Biscuits/Bullions as recovered from each petitioner were valued less than Rs. One Crore, hence, as per the provision laid down under Customs Act, the offence itself is bailable. However, the D.R.I authority, just with a view to give a different colour to the case, has issued only one composite seizure list against the recovery of 13 Biscuits/Bullions alleged to be recovered from the possessions of three different persons and further when the recipients of the said 13 gold Biscuits/Bullions are three different firms having three separate GST numbers, in such circumstance, how three different cases of three different registered firms can be clubbed together, which in itself put a question mark and just with a view to make out the offence non-bailable, the gold Biscuits/Bullions were clubbed into one seizure so as to increase the value of gold Biscuits/Bullions more than Rs. One crore. It is also worth mentioning that since the abolition of the Gold Control Act, 1968 in June 1990, there is no restriction of taking primary gold from one part of the country to other part. The gold was seized at Gaya which is within the Indian Territory, hence the seizure itself is illegal, improper and not tenable in the eyes of law. The petitioners are languishing in custody since 01.07.2022. A statement has been made in para 3 of the petition that petitioners haven no criminal antecedents.

Learned senior counsel appearing on behalf of the D.R.I and Customs Department have vehemently opposed the prayer for bail of the petitioners and submitted that the petitioners have admitted the possession of smuggled gold Biscuits/Bullions. They disclosed that said gold Biscuits/Bullions were concealed in Kamarband tightened around their waists. Individual notices were served upon and their personal search was conducted in front of Senior Intelligence Officer at the R.P.F post, Gaya and with consent of independent witnesses the apprehended persons and their belongings were brought to D.R.I Office, Patna for further proceedings. It is further submitted that during the course of personal search of the apprehended persons, total 1982.340 grams of Biscuits/Bullions were recovered which were valued as Rs. 1,03,45,832/-. The said Biscuits/Bullions were found to be marked as Refineries of Dubai (UAE). The statements of the apprehended persons were recorded under Section 108 of the Customs Act, 1962 wherein they admitted their guilt and stated that they are engaged in smuggling of gold. After investigation, show-cause notices were issued against the petitioners and others and based on the grounds, the A.D.G, D.R.I, Luckhnow Zonal Unit sanctioned the prosecution against the accused persons including the petitioners. During investigation, the documents produced by the petitioners in favour of the alleged seized gold Biscuits/Bullions were not found genuine. It is also submitted that upon analysis of C.D.R of mobile numbers recovered from the possession of the petitioners, it was found that petitioners were in Bihar throughout the day on 28.06.2022 which itself contradict the own version of the petitioners.

Considering the fact that recovery of gold Biscuits/Bullions from the individual possession of the petitioners are less than Rs. One Crore and the period under custody, let the petitioners, above named, be released on bail on furnishing bail bonds of Rs. 10,000/- (Ten Thousands) each with two sureties of the like amount each to the satisfaction of learned Special Judge, Economic Offences, Patna in connection with Economic Offence (Customs) Case No. 361(C) of 2022.

(Sunil Kumar Panwar, J)

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