

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.18604 of 2024

Arising Out of PS. Case No.-20 Year-2023 Thana- D.R.I District- Patna

Mohammad Hassan @ Md. Hassan S/O Md. Abbas Resident Of Near Nadvi
Manzil, Baniya Pokhar, Ps.- Civil Lines District- Gaya.

... .. Petitioner

Versus

1. The State of Bihar
2. The Union of India Through Narcotics Department (DRI) Delhi

... .. Opposite Partys

Appearance :

For the Petitioner	:	Md. Shadab Akhter, Advocate Mr. Shiv Prakash Tiwary, Advocate
For the Opposite Party	:	Mr. Mohammad Sufyan, APP
For the D.R.I	:	Mr. Anshuman Singh, Sr. SG, D.R.I Mr. Ranjay Kumar, Advocate

**CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH
SINGH**

ORAL ORDER

6 20-08-2024 Heard learned counsel for the petitioner as well as
learned counsel for the D.R.I and learned A.P.P for the State.

2. The petitioner has preferred this application for grant of regular bail in connection with Economic offences Case No. 85(O) of 2023 (D.R.I Patna Unit Case No. 20/2023-24) dated 13.12.2023 registered for the offences punishable u/s 135(1)(a), 135(1)(b) of the Customs Act.

3. As per the prosecution case, the informant gave a written petition to the Special Court, Economic Offence, Patna that in the light of specific intelligence input received regarding a syndicate involved in smuggling of foreign origin gold from



Yangon (Myanmar) to Gaya (Bihar) through Gaya International Airport with active involvement of Marshals deputed in the flights and flight handling executives working at Gaya International Airport. It is further alleged that the kingpin of the said syndicate was Md. Salim operating from Yangon while Arun Kumar and Pappu Kumar are Senior Customer Service Executive, Air India Airport Service Limited (AIASL), helped the syndicate in collecting foreign origin gold from Marshals in the flight and deliver it safely to Kunal Kishore for further delivery to Md. Hassan who used to deliver it to customers as per direction of Md. Salim. It is also alleged that consignment of gold was planned to be smuggled on 13.12.2023 via two Myanmar International Flights UB-7001 and 8M-601 coming to Gaya from Yangon. Thereafter, a search was made by a constituted team at the residence of Kunal Kishore, recipient of foreign origin gold and in that course, US \$1,24,000/- was recovered which was given to him by Md. Hassan (the petitioner) as commission from the sale proceeds of smuggled foreign gold. Thereafter, raid was conducted at the residence of Md. Hassan (the petitioner) and Rs. 8,40,000/- was recovered which was collected by him after delivery of smuggled foreign origin gold. One team of DRI Officers identified two staffs of AIASL, Gaya International Airport, namely, Arun Kumar and



Pappu Kumar and Marshal Mr. Ko Ko Latt of Myanmar International flight No. 8M-601 and Marshal Mr. Htin Linn Phyto of flight No. UB-7001. Thus three packets containing 9 foreign origin gold bar were recovered from the possession of Marshal Mr. KO KO Latt which were handed over to Pappu Kumar and 3 packets containing 7 foreign origin gold bar were recovered from the possession of Marshal Mr. HTIN LINN PHYO. Thus total weigh of all the recovered 25 gold bars were 12004 grams worth Rs. 7,38,24,600/- as per the valuation and weight of the gold bars done by the goldsmith. The accused persons could not give reply satisfactorily regarding recovery of the above mentioned articles.

4. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case. Nothing has been recovered from the conscious possession of the petitioner. Learned counsel has submitted that the name of the petitioner has surfaced in this case on the confessional statement of the co-accused Kunal Kishore, neither the petitioner was arrested on the spot carrying any sort of gold nor any incriminating documents or gold pieces have been recovered from the house of the petitioner during vigorous search conducted by the DRI, save and except cash amount of Rs. 8,40,000/- which is hard earned money of the petitioner's



father and has got absolutely no nexus with the smuggled goods or items. Learned counsel for the petitioner has submitted that the petitioner is a teacher in Urdu School and his father is an old man retired government employee who is suffering from heart problem and the petitioner has kept Rs. 8,40,000/- for treatment of his father. Learned counsel has further submitted that the petitioner is not a member of any syndicate and so far Kunal Kishore, Mar Meed Salim and Md. Zubair Akhter are concerned, they are all stranger to the petitioner. With regard to statement made in para. 21 of the Counter Affidavit, it is stated that the Detention Order No. PD-12001/09/2024-COFEPOSA), dated 06.03.2024, passed by the Joint Secretary COFEPOSA, New Delhi is absolutely colourable exercise of power by the concerned authority since the COFEPOSA is supposed to be imposed only against a professional offender whereas the fact remains that the petitioner had got absolute clean antecedent since prior to this case, he has never been made an accused in any Custom/DRI or police case etc., which in itself is conclusive proof of the petitioner's innocence and non-involvement in any smuggling activities. It is further submitted that the said gold was recovered from the possession of the co-accused persons which was liable for confiscation under Section 111 of the Customs Act and as per Section 125 of the Customs Act the



authority may levy fine in lieu of confiscation and, therefore, it appears from the provisions of Section 11 of the Customs Act gold is not prohibited goods but it is restricted goods and as per Section 125 of the Customs Act in lieu of confiscation fine may be levied. Therefore, as import of gold is not prohibited but restricted subject to prescribed payment of duty, thus alleged recovery of gold is not prohibited goods under Section 2(33) Customs Act but it is restricted goods in view of the judgment of three Judges Bench of the Apex Court in the case of Commissioner of Customs Vs. Atul Automation Private Limited,(2019) 3 Supreme Court Cases 539. The petitioner is in custody since 15.12.2023

5. Learned A.P.P. for the State as well as learned counsel for the D.R.I have vehemently opposed the bail petition of the petitioner. Learned counsel for the D.R.I. has submitted that the petitioner was a member of syndicate who used to collect the smuggled gold of foreign origin from Kunal Kishore and delivered the same to various persons on direction of kingpins of this case i.e., Md. Zubair Akhter @ Guddu and Mr. Mar Meed Salim @ Salim. The petitioner in his statement dated 14.12.2023 also stated that he met Md. Zubair Akhter @ Guddu in the year 2017 at Kolkata when he visited Kolkata for donation of *Madarasa* and he was doing the smuggling work for



Md. Zubair Akher @ Guddu and Md. Salim since 2017. Learned counsel for the D.R.I. in his counter affidavit has submitted that the Detention Order No. PD-12001/09/2024-COFEPOSA), dated 06.03.2024, has been issued to Mohammad Hassan by the Joint Secretary COFEPOSA, New Delhi and the said order was duly served upon him on 11.03.2024. It is further submitted that the statement of the petitioner (Md. Hassan) is recorded u/s 108 of the Customs Act in the context of seizure of 12,004 grams of foreign origin gold bullion vide DRI PRU Unit Case No. 20/2023-24 dated 13.12.2023.

6. Considering the aforesaid facts and circumstances of the case as well as the period of custody, the petitioner above-named, is directed to be enlarged on bail on furnishing bail-bond of Rs.20,000/- (Rupees Twenty Thousand) with two sureties of the like amount each to the satisfaction of learned Special Judge, Economic Offence, Patna in connection with Economic offences Case No. 85(O) of 2023 (D.R.I Patna Unit Case No. 20/2023-24), with the condition:-

(i). The petitioner is directed to remain physically present before the learned Court below on each and every date, failing which on two consecutive dates without reasonable cause, the bail bonds of the petitioner is liable to be cancelled.



7. The application stands allowed.

(Chandra Prakash Singh, J)

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