

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.28493 of 2024

Arising Out of PS. Case No.-9 Year-2023 Thana- D.R.I District- Patna

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Ankit Kachhwaha Son of Sri Santosh Kachhwaha Resident of Old Abkari
Kahar Mohalla, Ward No. 41, P.S. Kotwali, District Satna (Madhya Pradesh)

... .. Petitioner/s

Versus

The Union of India through Directorate of Revenue Intelligence, Regional
Office, Patna Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mohit Agrawal, Advocate

Mr. Vishal Kumar, Advocate

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

Mr. Anshuman Singh, Sr.S.C., D.R.I.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT

Date : 23-09-2024

This is an application for grant of anticipatory bail to the
petitioner in connection with Economic (DRI) Case No. 71 (O) of
2023, arising out of Unit Case No. 09 of 2023-24 dated 01.08.2023
registered for the offences punishable under Sections 135(1)(a)
and 135(1)(b) of the Customs Act, 1962.

2. The prosecution case is that a specific information
was received by the officers of the Directorate of Revenue
Intelligence (hereinafter referred to as the DRI), Regional Unit,
Patna that consignment of Foreign Origin smuggled Gold was
being transported from Howrah to Satna by a person namely
Manish Sen, who was travelling on berth no. 47 of coach B- 6 of



train no. 22912 (Shipra Express). Acting upon the said information, Officers of DRI, Regional Unit Patna, in presence of independent witnesses, intercepted the said person travelling at berth number B-6/47 of train number 22912 (Shipra Express) which had arrived at platform number-1 of Gaya Railway junction at around 01.36 Hrs. on 01.08.2023. The said person introduced himself as Manish Sen and told that he was going to Satna from Howrah by the said train. The officers of DRI, Regional Unit, Patna informed him about the information regarding smuggling of foreign-origin gold bullions, however initially, the apprehended person denied possession of smuggled foreign-origin gold, but when the officers of DRI, Patna told that they would conduct his personal search, co-accused Manish Sen admitted that he was carrying foreign-origin smuggled gold bullion, which he had kept hidden in a green colour waistband and the said waistband was tied to his waist. The apprehended person also stated that he does not possess any document related to import or transportation of the gold. Thereafter, notice under Section 102 of the Customs Act, 1962 was served to the apprehended person and he was informed about his rights to get his personal search conducted, after de-boarding the said train at next station, before the departmental gazetted officer or the nearest Magistrate, on which he expressed



his consent in writing. Subsequently, apprehended person along with his personal belongings was de-boarded from the said train at platform no. 2 of next station i.e. Anugrah Narayan Road Station at around 02.35 hours and brought to the office of DRI, Patna Regional Unit at Patna. Thereafter, personal searches of Manish Sen along with his belongings were conducted under Section 102 of the Customs Act, 1962 before senior officials of DRI, and three packets packed with carbon paper, newspaper and rubber bands kept in the waistband tied around the waist of Manish Sen were recovered. The said three packets were found to contain two yellow-colored bullion and three cut pieces of bullion which appeared to be gold. The recovered 02 bullion and 03 cut pieces of bullion were examined by a Government registered Valuer, who certified the purity of Gold and issued a certificate dated 01.08.2023 covering the details of description, weight and value of the gold. As per the valuation of the above-said valuer of the gold, the total weight and value of the recovered gold were found to be 2216.500 grams and Rs. 1,36,35,908/- respectively. The said material was seized under Section 10 of the Customs Act and a case was registered, vide DRI, Patna Unit Case No. 09/2023-24 dated 01.08.2023.



3. Learned counsel appearing on behalf of petitioner submits that petitioner is innocent and has committed no offence, as alleged in the aforesaid complaint. The petitioner is working as an employee in a shop namely M/s Laxmi Padmawati Bullion, a proprietary concern having its shop at Gandhi Chowk, Satna (M.P.) and Mahip Sah is the owner and proprietor of the said shop, who is engaged in business of sale and purchase of gold bullion, for which, the said shop was got registered, vide Registration No. 8740/STN/2013 (Annexure P/3).

4. Learned counsel for the petitioner further submits that in the said shop, petitioner is working since long and discharging the work of entertaining the customers and also to take gold bullions from the establishment to other places for getting the same exchanged for gold ornaments or getting it molded into gold ornaments. Petitioner is nowhere involved in the smuggling of said gold. As a matter of fact, for the purpose of security and to safely carry the gold bullion, Manish Sen had hidden the same in a waist band of green colour and had tight the same along with his waist so that the same could be carried safely. The sale of gold (24 *Carrat*) is not prohibited under the Customs Act, 1962 whereas the same is permitted to be sold under valid Invoices, whereas in the present case, the alleged gold bullions are not prohibited item of



trade under the Customs Act, 1962; rather, Manish Sen was carrying the same with valid documents and, therefore, the said gold bullion merely on presumption cannot be even *prima facie* considered to be goods liable for confiscation under Section 110 of the Customs Act, 1962.

5. Lastly, learned counsel for the petitioner submits that in view of law laid down by the Hon'ble Supreme Court in the case of **Satender Kumar Antil vs. C.B.I.**, reported in **2022 (10) S.C.C. 51**, the petitioner may be extended the privilege of anticipatory bail, as in the present case, the Hon'ble Supreme Court has held that in the case, where investigation is complete and accused is not required for custodial interrogation, the accused must be given the benefit of bail.

6. Sri Anshuman Singh, learned counsel appearing on behalf of D.R.I. vehemently opposes the prayer for anticipatory bail and submits that Manish Sen, who was colleague of the petitioner and was receiving direction from petitioner, was intercepted while he was travelling by train no. 22912 at berth no. 47 of coach B-6 and he was served with the notice under Section 102 of the Customs Act, 1962 and Manish Sen in his voluntary statement dated 01.08.2023 had admitted to be indulged in transportation of smuggled gold as per the directions of Mahip



Shah and this petitioner, in lieu of monetary benefits and Mahip Shah, the owner of the said seized gold bullions, in his voluntary statement dated 02.08.2023, had also accepted his indulgence in the purchase, sale and transportation of foreign origin smuggled gold. Sri Mahip Shah had also accepted that Manish Sen and the petitioner were working as per his directions and that he was introduced to the alleged supplier, Momin, by the petitioner. The screenshots of *WhatsApp* chats submitted by Shri Manish Sen during his voluntary statement dated 01.08.2023 shows that ***the petitioner was actively involved in arranging travel tickets for Manish Sen for procuring and transporting the smuggled gold.*** The said chats also show that he was providing monetary benefits to Shri Manish Sen and was working as per the directions of Shri Mahip Shah. Therefore, the claim of the petitioner of being implicated is highly atrocious and incorrect, as ***the petitioner was a key member of the syndicate managing the whole business of the smuggled gold.***

7. Learned counsel for D.R.I. further submits that huge quantity of smuggled gold will be detrimental to the steps taken by Government of India in its fight against Black Money as these activities are not only funded by them but the proceeds are also used to generate more Black Money. In the instant case also, the



petitioner working as the Manager of M/s Laxmi Padmawati Bullion had not appeared before the investigating officer despite multiple summons issued to him.

8. Having heard the submissions, as advanced by learned counsel for the parties, and perused the materials, available on record, as also the statements made by co-accused Manish Sen, who was apprehended with alleged smuggled gold, and Mahip Sah, owner of the shop, this Court is of the considered opinion that petitioner was the key member of the syndicate managing the whole business of the smuggled gold and therefore, no favourable order can be passed in his favour.

9. Accordingly, the prayer for anticipatory bail of petitioner is rejected.

(Prabhat Kumar Singh, J)

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AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	30.09.2024
Transmission Date	30.09.2024

