

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.35281 of 2024

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

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Arun Kumar Son of Arjun Prasad Resident of Ward No.- 12, Near Ram Ruchi Girls High School , Rajendra Path, Telbigha, P.S- Kotwali, Dist- Gaya, Bihar, Pin- 823001

... .. Petitioner/s

Versus

1. The Union of India through Narcotics Department (D.R.I.) Patna
2. The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Shivesh Kumar Singh, Advocate
	:	Mr. Ankur Apurva, Adv
For the Opposite Party/s	:	Dr. K.N. Singh (A.S.G.)
For the D.R.I.	:	Mr. Anshuman Singh, Sr. S.C. D.R.I.

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CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

5 25-10-2024 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 (Petitioner) 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 as commission from the sale proceeds of smuggled foreign gold. Thereafter, raid was conducted at the residence of Md. Hassan 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 (Petitioner), 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 Arun Kumar (petitioner) and 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 PHYTO. Thus total weight 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. It is further submitted that the petitioner was detained by investigating agency two hours prior to landing the air craft but CCTV footage of the same was not preserved on record. It is further submitted that total five items were recovered from the conscious possession of the petitioner



but no any incriminating smuggled foreign origin gold was recovered from the possession of the petitioner. The petitioner has been working at Gaya international Airport since 2015 as Senior Customer Service Executive in the Commercial Section of Air India Flight Company which has now been renamed as Air India Airport Service Ltd. (AIASL). It is relevant to mention here that the petitioner knows the co-accused Kunal Kishore as he was an ex-employee of the same department and except him, the petitioner did not know any co-accused persons. Learned counsel has further submitted that the petitioner is not a member of any syndicate. The petitioner has clean criminal antecedent. The petitioner 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 13.12.2023 stated that six packets of foreign gold were brought by the marshal of the international flight number 8M-601 (Mayanmar Airways International), out of which three packets (weighing four kg.) were to be received by him. It is further submitted that the statement of Arun Kumar (Petitioner) was recorded u/s 108 of the Customs Act, 1962 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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