

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.39369 of 2024

Arising Out of PS. Case No.-31 Year-2024 Thana- D.R.I District- Patna

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1. Rohit Mukund Gurav Son of Late Mukund Shankar Gurav, Resident at the House of Niwas Krishna Gurav, P.O- Savarde, P.S- Tasgaon, District- Sangli, Maharashtra- 416408.
 2. Vikram Ganapati Kumbhar Son of Shri Ganapati Kumbhar, Resident of Village- Borgaon, Post- Borgaon, P.S- Kavthe, Mahankal, Dist- Sangli, Maharashtra- 416419.
 3. Shekhar Balvant Landage Son of Shri Balvant Landage, Resident of Village- Atpadi, Sathe Nagar, P.S- Atpadi, Dist- Sangli, Maharashtra- 415301.

... .. Petitioners

Versus

1. The Union of India Through Its Intelligence Officer, DRI Regional Unit, Patna Posted in the Office of the Deputy Director, Directorate of Revenue Intelligence, Regional Unit, Patna
2. The State of Bihar through its Senior Superintendent of Police, Patna. Bihar

... .. Opposite Party

Appearance :

For the Petitioners	:	Mr. Siddhartha Prasad, Advocate Mr. Om Prakash Kumar, Advocate
For the UoI	:	Mr. (Dr.) Anshuman Singh, Sr. SC, Custom/DRI

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

- 3 18-09-2024 Heard Mr. Siddhartha Prasad, the learned counsel

for the petitioners and Mr. (Dr.) Anshuman Singh, the learned

senior standing counsel for the DRI.
2. Petitioners seek regular bail, who are in custody

since 08.03.2024, in connection with Economic (DRI) Case No.

22(O) of 2024, arising out of Unit Case No. 31 of 2023-24, FIR

dated 08.03.2024, registered for the offences punishable under



Sections 135(1)(a) and 135(1)(b) of the Customs Act, 1962.

3. According to the prosecution case, after receiving confidential information, the officers of Directorate of Revenue Intelligence (DRI), Patna intercepted a Hyundai CRETA car bearing registration no. WB-02AM-4919 on 08.03.2024 at Kolkata-Delhi highway and three persons (petitioners) were found sitting in the said car and upon further interrogation they admitted that they were carrying gold bullions and cut pieces of gold bullions of foreign origin gold, which were smuggled from Bangladesh into India. It is further alleged that the said persons along with said car and independent witnesses were brought to the office of DRI, Patna and during personal searches of the apprehended persons in presence of independent witnesses, mobile phones, documents and some cash were recovered. It is further alleged that during the search of said Hyundai CRETA car, certain documents and one iPhone were recovered and from the glove box of the said car, twenty-two pieces of gold bullions along with eight cut pieces of gold bullions were recovered. It is further alleged that the total weight of the recovered gold bullions and cut pieces were found to be 3987.300 grams worth of Rs. 2,67,94,656/- (Rupees two crores sixty-seven lakh ninety-four thousand six hundred and fifty-six only).



4. Learned counsel for the petitioners submits that petitioners have clean antecedent and they have falsely been implicated in the present case and the allegation levelled in the FIR is false and fabricated and the petitioners have not committed any offence as alleged in the FIR. In fact, the petitioners are drivers and they get paid on daily wage basis for doing duty as a driver and it appears from the FIR and seizure list that during personal search of the petitioners, the DRI officials have seized their mobile phones, Aadhar card, voter ID card and driving license and the money recovered from the conscious possession of the petitioners is Rs. 840/- (Rupees eight hundred and forty only), 1910/- (Rupees one thousand nine hundred and ten only) and Rs. 1040/- (Rupees one thousand and forty only) respectively, and it appears from the seizure list itself that the seized gold has not been recovered from the conscious possession of the petitioners and actually the alleged seized gold has been recovered from the secret cavity underneath the seat next to driver's seat from the alleged Hyundai CRETA car and it is an admitted fact that the petitioners are not the owner of the car in question. He further submits that from perusal of the FIR, it appears that two seizure lists have been prepared by the custom officials. The first



seizure list was prepared on the spot at 12:35 AM, which relates to personal search of the petitioners, wherein no incriminating articles were recovered from the possession of the petitioners. The subsequent second seizure list has been prepared by the custom officials at Patna at 06:05 hrs. as per which the alleged gold has been recovered from the car in question and it is evident that nothing has been recovered from the conscious possession of the petitioners and they were not aware about the alleged gold in the said Hyundai car.

5. Learned counsel for the petitioners submits that after arrest of the petitioners by the custom officers, the petitioners were threatened by the custom officers that when they will be produced in Court, then they will have to give statements in the learned trial Court as taught by the officers, otherwise they will face dire consequences and the petitioners out of fear of the custom officers submitted before the learned trial Court that they had read and heard and understood the statements which have been submitted by the custom officers in the learned trial Court under Section 108 of the Custom Act.

6. Learned counsel for the petitioners submits that when the petitioners were in judicial custody, the petitioners requested the jail authority to allow them to give their real



statements in the Court through letters, then the jail authority after much delay and persuasion allowed the petitioners, after which the petitioners stated following statements to the learned trial Court through their letters dated 04.05.2024:

“(a) That when we were going to Gwalior as a driver in Hyundai Creta car number WB-02AM-4919, we were caught by the custom officials in Gaya district, Bihar on 08.03.2024 and immediately our mobile phones were seized.

(b) That about 6-7 people of the customs department stopped our car and immediately blindfolded and made us sit in their car, when we tried to ask, they started threatening with encounter due to which we did not say anything due to fear. Custom Officers assaulted us in the car and told them to do exactly as they say. After about 2 hours, when blindfold was removed, we came to know that we were in the office of the Custom Officer in Patna and we were arrested in Patna. It was told that foreign gold was found in the car in which they were sitting.

(c) That the customs official brought some computer typed pages and some plain pages and asked to sign. When we tried to ask what was written on the paper and what would be written on the plain paper, the officials again tried to kill and threatened to conduct an encounter due to which we had to sign the papers without reading and without consent.

(d) That even before taking to the court, we were threatened by all the officials not to talk about assault, threats and torture in the court, due to which we were forced to sign in the court out of fear. We did not speak about the assault and threatening before the Judge.

(e) That we do not know anything about the alleged seized gold, we were only given the job of driving the



vehicle, the seized vehicle is also not mine, were are innocent.”

7. From perusal of the complaint and *panchnama* of the case it appears that from the car in question, total gold of value of Rs. 2,67,94,656/- (Rupees two crores sixty-seven lakh ninety-four thousand six hundred and fifty-six only) was recovered, therefore, from the individual possession of the petitioners less than Rs. One crore was recovered.

8. Learned counsel for the petitioners have relied upon the order dated 04.09.2024 passed in Cr. Misc. No. 46350 of 2024 in the case of ***Ravindra Kumar Jain v. The Union of India***, vide which a co-ordinate Bench of this Court has been pleased to grant regular bail to the petitioner from whom thirty-five pieces of foreign origin gold bullions worth of Rs. 3,94,58,571/- (Rupees three crores ninety-four lakh fifty-eight thousand five hundred and seventy one only) were recovered from the secret cavity of the car which was driven by the similarly situated co-accused persons. He has also relied upon the order dated 27.08.2024 passed in Cr. Misc. No. 56899 of 2024 in the case of ***Deepak Kumar & Anr. v. The Union of India***.

9. Learned counsel for the petitioner submits that gold



was recovered from the vehicle in question, which is liable to confiscation under Section 111 of Customs Act and as per Section 125 of the Customs Act, the authority may levy fine in lieu of confiscation and it appears from the provisions of Section 11 of Customs Act, gold is not prohibited goods, but it is restricted goods and as per Section 125 of Customs Act, in lieu of the confiscation, fine may be levied. Therefore, the gold in question is not prohibited but restricted subject to prescribed payment of duty, thus, the allegedly recovered gold is not prohibited goods under Section 2(33) Customs Act, but it is restricted goods in view of the judgment of the three Judges Bench of the Hon'ble Apex Court in case of *Commissioner of Customs v. Atul Automations Private Limited* reported in *(2019) 3 SCC 539*.

10. The learned counsel for the DRI has filed a counter-affidavit stating therein that the statements of the petitioners were recorded under Section 108 of the Customs Act, 1962 on 08.03.2024 and foreign markings were also found engraved on 17 of the recovered gold bullions and the petitioners also admitted that a person namely, Shri Gopi Ingale was the owner of the said recovered gold bullions and the Hyundai Car in question and the documents recovered from the



car in question also confirms that Shri Gopi Ingale was the owner of the car in question. It also appears from the seizure list that altogether twenty-two pieces of gold bullions and eight cut pieces of gold bullions of foreign origin weighing 3987.300 grams of value of Rs. 2,67,94,656/- (Rupees two crores sixty-seven lakh ninety-four thousand six hundred and fifty-six only) has been recovered from the vehicle in question. Apart from that, the petitioners have admitted in their statement, which was recorded under Section 108 of the Customs Act, 1962, that they were engaged in transportation of foreign origin smuggled gold for the last one month and they were knowing that transportation of smuggled foreign origin gold is a legal offence and he has also relied upon the judgment and order dated 21.03.2024 passed in Misc. Appeal No. 528 of 2022.

11. Considering the aforesaid facts and circumstances and mainly the facts that petitioners have clean antecedent, nothing has been recovered from the conscious possession of the petitioners, rather the recovery have been made from the vehicle in question and the nature of allegation levelled against the petitioners in the FIR as well as the petitioners' period of custody, let the petitioners, above-named, be released on bail on furnishing bail bond of Rs. 50,000/- (Rupees Fifty Thousand



only) each with two sureties of the like amount each to the satisfaction of the learned Special Judge, Economic Offences, Patna, in connection with **Economic (DRI) Case No. 22(O) of 2024, arising out of Unit Case No. 31 of 2023-24**, subject to the following conditions:

(i). Petitioners shall co-operate in the trial and shall be properly represented on each and every date fixed by the learned trial Court and shall remain physically present as directed by the learned trial Court and on their absence on two consecutive dates without sufficient reason, their bail bond shall be cancelled by the learned trial Court.

(ii). If the petitioners tamper with the evidence or the witnesses, in that case, the prosecution will be at liberty to move for cancellation of bail.

(iii). And further condition that the learned trial Court shall verify the criminal antecedent of the petitioners and in case at any stage it is found that the petitioners have concealed their criminal antecedent, the learned trial Court shall take step for cancellation of bail bond of the petitioners. 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.



(iv) One of the bailors should be the blood
relative / close relative of the petitioners.

(Rajesh Kumar Verma, J)

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