

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.53537 of 2024

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

Pappu Kumar S/O- SURENDRA PRASAD SINGH R/O- WARD NO 6, C/O
BAIJU MISTRY, SANJAY NAGAR, BAGESHWARI, P.S- DELHA , DIST-
GAYA

... .. Petitioner/s

Versus

1. UNION OF INDIA INDIA
2. DIRECTORATE OF REVENUE INTELLIGENCE BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Dharendra Prasad Sinha, Adv.
For the Opposite Party/s	:	Dr. Krishna Nandan Singh (A.S.G), APP
For the DRI	:	Mr. Anshuman Singh, Sr. S.C. D.R.I. Mr. Ranjay Kumar, Adv.

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

ORAL ORDER

3 05-09-2024 Heard learned senior counsel for the petitioner,

learned senior counsel for the D.R.I and learned APP for the

State.

2. The petitioner has preferred this application for
grant of regular bail in connection with Economic Offence 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 under
Sections 135(1)(a), 135(1)(b) of the Customs Act.

3. As per the prosecution case, the informant being the
Intelligence Officer, DRI, Regional Unit, Patna, gave a written
petition to the Presiding Officer, Economic Offence, Patna, in



the light of specific intelligence input received regarding a syndicate involved in smuggling of foreign origin gold from Yangoon (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 Yangoon while Arun Kumar and Pappu Kumar(petitioner) 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 who was the former employee of (AIASL) 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 Yangoon. 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, a 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 and Pappu Kumar (petitioner) 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, three packets containing 9 foreign origin gold bars were recovered from the possession of Marshal, Mr. KO KO Latt which were to be handed over to Pappu Kumar(petitioner) and 3 packets containing 7 foreign origin gold bars 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 any satisfactorily reply regarding recovery of the above mentioned articles.

4. Learned senior counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case. It is further submitted that the genuineness of prosecution story is under serious doubt so far as



the case of the petitioner, Pappu Kumar is concerned, the impugned smuggled gold of foreign origin was never sold so no question of recovery of its sale proceeds arises. No gold of foreign origin has been recovered from the possession of the petitioner, hence, no case under the Customs Act is made out against the petitioner. The search and seizure at the residence of the petitioner was made in complete violation of law, rules and procedures. The petitioner is posted as senior service executive in commercial section of Air India Airport Service Limited and he was well known for his honesty and commitment. There has been no adverse finding against the petitioner during his entire service career. It is further submitted that the other co-accused person, Kunal Kishor has already been granted bail by a Bench of this Court vide Cr. Misc. No. 19633 of 2024 under order dated 28.08.2024. 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 has clean antecedent as stated in paragraph no. 3 of the bail petition. The petitioner is in custody since 15.12.2023.

5. Learned APP for the State and the learned Senior counsel for the D.R.I has vehemently opposed the bail petition of the petitioner and submitted that the petitioner was a member of the syndicate and was involved in smuggling of foreign origin gold from Yangoon, Myanmar to Gaya, Bihar by the Flight Marshalls and further carriage/delivery of the said smuggled gold outside the Airport to the Kunal Kishore(co-accused) by the Airline's staff. It is further submitted that on search, a mobile phone, identity card, certificate and Rs. 3010/- were recovered from the possession of the petitioner. It is further submitted that the petitioner was posted at Gaya International Airport as Senior Customer Service Executive, Air India Service Limited is totally false because the petitioner has



joined his service on 16.12.2016 at Gaya International Airport then he was transferred to Jharsuguda Airport. The petitioner in his statement recorded under Section 108 of the Customs Act, 1962, admitted that he was aware of the smuggling of foreign origin gold from Gaya International Airport and his involvement in that entire syndicate was that Md. Salim used to inform him about the quantity of gold coming by the Myanmar International Flight and he used to convey the said information to Arun Kumar and Pappu Kumar(petitioner) and both persons used to collect the foreign origin gold from the Marshals in the flight as per the directions of Md. Salim and the petitioner used to receive the foreign origin gold from Arun Kumar and deliver the same to Md. Hassan. He used to get a sum total of 1300 USD per kg of foreign origin gold smuggled out of Gaya International Airport and the said recovered 1,24,000 US Dollars was his commission out of the sale proceeds of the smuggled foreign origin gold and he received the said foreign currency from Md. Hussan for the delivery of foreign origin gold smuggled out of the Gaya Airport over the last one month. Learned counsel for the D.R.I. in his counter affidavit has stated that the Detention Order No. PD-12001/08/2024-COFEPOSA), dated 06.03.2024, has been issued to the petitioner by the Joint Secretary



COFEPOSA, New Delhi and the said order was duly served to him on 11.03.2024.

6. Considering the aforesaid facts and circumstances of the case as well as the period of custody of the petitioner, 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 Offences, Patna in connection with Economic offence Case No. 85(O) of 2023 (D.R.I Patna Unit Case No. 20/2023- 24) with further 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)

shivam/-

U		T	
---	--	---	--

