IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.54142 of 2024

Arising Out of PS. Case No.-29 Year-2024 Thana- D.R.I District- Patna

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Kaushal Yadav, aged about 38 years, Male, Son of Shri Balram Yadav, R/O Vill.- Pipra, P.S.- Daraundha, Dist.- Siwan.

... ... Petitioner

Versus

The Union of India through the Deputy Directorate of Revenue Intelligence, Regional Unit, Patna.

... ... Opposite Party

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Appearance :

For the Petitioner : Mr. Bindhyachal Singh, Sr. Advocate, Mr. Vipin Kumar Singh, Advocate, Mrs. Smriti Singh, Advocate and Mr. Kumar Awnish Ankit, Advocate

For the Opposite Party : Mr. Sanchay Srivastava, Sr. Standing Counsel, D.R.I., Mr. Ankit Kumar Singh, Junior Standing Counsel, D.R.I., Mr. Ashish Kumar Palit, Advocate and Mr. Sushant Srivastava, Advocate.

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CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

4 03-10-2024 Heard learned senior counsel for the petitioner and learned counsel for the D.R.I.

2. The petitioner seeks bail in connection with Economic DRI, Patna Case No. 20(O) of 2024, arising out of Unit Case No. 29 of 2023-24 dated 28.02.2024 registered for the offences punishable under Sections 135(1)(a) and 135(1)(b) of the Customs Act.

3. As per the prosecution case, a written complaint has been filed by the Directorate of Revenue Intelligence, Regional Unit, Patna, on a confidential information regarding smuggling of Foreign Origin Gold. On 27.02.2024 at around 10:26 P.M.,

the officers of the DRI, Patna, intercepted three persons at Patna Railway Junction. It is further alleged that on interrogation, Shri Kaushal Yadav (petitioner) admitted the possession of smuggled Gold bullion of foreign origin and the co-accused Deepak Kumar and Upendra Manjhi were his staff and they were assisting him in carrying the said gold bullion of foreign origin. Thereafter, the apprehended persons were served notices under section 102 of the Customs Act, 1962. The apprehended persons and the seized gold bullion were brought to the DRI Office, Patna. It is further alleged that the personal searches of the apprehended persons were conducted under section 102 of the Customs Act, 1962 in DRI Office, Patna. During the search, from the bag pack of Shri Kaushal Yadav (petitioner), two packets made of newspaper and carbon paper were recovered. The said packets were marked as “A” and “B”. Total 11 gold bullions from each packets were recovered which is believed to be Gold Bars/bullions of foreign origin. On being asked about the said recovery, the apprehended persons could not produce any document in respect of stock/purchase/importation of the recovered gold of foreign origin. From an open source, it were found that the foreign markings engraved on the gold bullions found to be brand of UAE. It is further alleged that the said recovered gold bullions were examined by a Government Registered Valuer, who certified the purity of Gold and issued a certificate containing the details of description, purity, weight and value of the recovered gold bullions. The total weight of recovered gold bullion was 2563.00 grams valued at Rs. 1,63,90,385/- (One Crore Sixty Three Lakhs Ninety Thousand Three Hundred and Eighty Five Only). It is further alleged that the statement of the co-accused and Shri Kaushal Yadav (petitioner) recorded under section 108 of the Customs Act, 1962, wherein the petitioner Shri Kaushal Yadav admitted that he was the owner of the seized gold bullions. The petitioner Shri Kaushal Yadav along with the co-accused Deepak Kumar and Upendra Manjhi went to Malda to bring the smuggled gold of foreign origin. All three accused persons admitted their involvement in smuggling activity of foreign origin gold in lure of money.

4. Learned 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 petitioner has a jewellery shop at Bakarganj, Patna and carries on a business of goldsmith under the name and style of ‘Sri Balram Jewellers’. He is engaged in doing of a business of buying and selling of

gold at Bakarganj, Patna. It is further submitted that from perusal of the documents annexed with the complaint, it is apparent that the petitioner purchased the alleged gold bullion from one Khokan Swarnkar @ Allu, Malda, and his Mobile Number is 9474690222 on payment of Rs. 1,61,000,00/- and he had no knowledge or has reason to believe the seized articles are liable to be confiscation under Section 111 or Section 13 of the Custom Act. The said Khokan Swarnkar @ Allu has not been made an accused by the Intelligence Officer in the present complaint. It is further submitted that the seizure list was prepared at DRI Office, Patna on 28.02.2024 at around 05:00 P.M. by the Intelligence Officer, DRI Regional Unit, Patna, who is not an officer of the Custom as per Section 3 of the Customs Act. Therefore, the seizure list was prepared by the said Intelligence Officer, DRI Unit, Patna, who is not a competent Custom Officer to make search and seizure according to section 102 of the Customs Act, hence, there is no evidentiary value of seizure list. It is next submitted that there is no allegation against the petitioner for taking gold out of India. It is further submitted that the other co-accused persons, namely, Deepak Kumar and Upendra Manjhi, have already been granted bail by a Bench of this Court vide Cr. Misc. No. 56899 of 2024 under order dated 27.08.2024. It is further submitted that the said gold 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) of the 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 para 3 of the bail petition. The petitioner is in custody since 28.02.2024.

5. Learned senior counsel for the D.R.I has vehemently opposed the bail petition of the petitioner by submitting that on information, the petitioner and the co-accused persons Deepak Kumar and Upendra Manjhi who are the staffs of the petitioner, were arrested by the D.R.I. on Patna Junction and the petitioner has admitted that he was in

possession of foreign origin gold bullions kept in Pitthu bag and he also admitted that his two staff Deepak Kumar and Upendra Manjhi were helping him to carry the said bag containing foreign origin smuggled gold bullions and were involved in smuggling and carriage of the said recovered gold bullions of foreign origin from Bangladesh to Malda (W.B.) and they could not produce any legal document in this regard. It is further submitted that the statement of the petitioner and the co-accused persons were recorded under Section 108 of the Customs Act in the context of seizure of 2563.00 grams of foreign origin gold bullions.

6. Considering the aforesaid facts and circumstances of the case and the nature of allegation levelled against the petitioner 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 DRI, Patna Case No. 20(O) of 2024, arising out of Unit Case No. 29 of 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 bond of the petitioner is liable to cancelled.

7. The application stands allowed.

U.K./-

(Chandra Prakash Singh, J)

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