IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.68246 of 2023

Arising Out of PS. Case No.-67 Year-2023 Thana- PATNA COMPLAINT CASE District- Patna

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1. Premal Ketan Radia Son Of Sri Ketan Radia Resident Of Village- House No. 9, Vidya Vihar Mahtre Chawl, C S Road, Dahisar East, Ps- Dahisar, Mumbai, Maharashtra
2. Anil Paswan @ Anil Saroj Son Of Shri Ramkeval Paswan Resident Of Village- Turk Padari, Po- Patila Gausapur, Ps- Bilariya Ganj, Distt- Azamgarh, Up

... ... Petitioner/s

Versus

1. The Union Of India Through The Deputy/Assistant Director, Directorate Of Revenue Inteligence, Luchnow Zonal Unit, Patna Regional Unit, Patna, Malaynil, Buddha Colony, Patna
2. The Senior Intelligence Officer, Directorate Of Revenue Intelligence, Lucknow Zonal Unit, Lucknow Zonal Unit, Patna Regional Unit, Patna, Malaynil, Buddha Colony , Patna
3. The Intelligence Officer, Directorate of Revenue Intelligence, Lucknow Lucknow Zonal Unit, Patna Regional Unit, Patna, Malaynil, Buddha Colony

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mrs. Nivedita Nirvikar, Sr. Adv.
		Mr. Amit Pandey, Adv.
For the DRI	:	Mr. Anshuman Singh, Sr. SG (DRI)
		Mr. Ranjan Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR

ORAL ORDER

4 22-01-2024 Heard Sr. learned counsel for the petitioners and learned Sr. counsel appearing on behalf of he D.R.I. .

2. The petitioners have prayed for bail in a case registered for the offence punishable under sections 135 (i)(a) and 135 (1)(b) of the Customs Act.

3. As per allegation in the FIR, on getting specific information regarding smuggling of foreign origin gold from

Bangladesh, both the petitioners were apprehended from Duranto Express at Patna Railway Junction by the police. On enquiry, both the accused admitted about smuggled foreign origin gold bullion with them. On search, the said smuggled items were recovered from their waist, kept hidden in their waistband for which they could not produce any valid documents regarding the recovered items. Total 12 packets (6 packets from each of them) wrapped in brown colour tapes and some papers were recovered from their possession. On opening the packets, total 29 small pieces of yellow total and 3 big pieces of yellow metal were recovered from petitioner no. 1. Further 7 pieces of yellow metal were recovered from possession of petitioner no. 2. As per valuation of Government registered valuer of DRI Office, Patna, total weight and market price were found to be as 12,577.100 grams and Rs. 7,72,61,125/- respectively.

4. It is submitted by learned counsel for the petitioners that petitioners have been falsely implicated in this case. Petitioners never ever indulged in import, export, buy or sell of any prohibited goods and also they were not having the possession of any kind of foreign marked gold. The entire story is manipulated, fabricated and concocted story. It is submitted

that Remand Report of DRI, though mentions about contravention of Section 11 of the Customs Act, 1962 which is about notifying “prohibited goods” by the Central Government, but no notification specifying “gold” being imported from Bangladesh, which is the allegation in this case, have been quoted to show that the said goods are “Prohibited”. Unit Case No. 05 of 2023-24 was registered at the office of DRI, Regional Unit, Patna on 09.6.2023 based upon a concocted story and coercive confessions were taken from the accused persons and there is nothing substantive in the said Unit Case. Whole story made by the DRI is fictitious and entirely based on presumption and pre-determined notions, which is evident from Arrest Order and Grounds of Arrest.

5. The seizure list prepared by the DRI, does not mention about any marking, number of the name of the mint of the gold bars from which it could be deciphered or believed that the Gold, which has been seized are of foreign origin or the smuggled one. Thus, the said gold bars is of foreign origin or smuggled in to India are liable for confiscation under Section 111 of the Customs Act, 1962 for seizure of Gold bars under Section 110 of the said Act is without any material basis. The ground for proceeding against the accused persons in the instant

matter is without any basis and is in utter violation of procedural safeguard as provided u/s 110 of the Customs Act.

6. In the Customs Act, there is nowhere a definition of smuggled goods which is defined and there it becomes a onerous duty of both the accused as well as the DRI to borrow the definition from the dictionary, which statutorily means such type of interception at a Border Area, Land Customs Stations, International Airports and not in cases of town seizure, because unless the proper reasons to belief/reasonable beliefs the DRI is not able to proof the element of smuggling and that to for a compoundable offenses, there cannot be any ground for discharge of burden by the Department upon the accused.

7. Further it is submitted that allegedly place of recovery of gold bar is Patna Railway Junction in the Arrest Memo and Panchnama but the place of seizure has been shown as Office premises of DRI, Regional Unit, Patna. Both the petitioners are languishing in judicial custody since 10.06.2023.

8. The application for bail is opposed by learned Sr. counsel appearing for DRI and submitted that both the petitioners were caught red handed on 9.6.2023 while transporting the foreign origin smuggled gold bullions weighing 12577.100 grams valued at Rs. 7,72,61,125/-. The petitioners

have also admitted in their statements recorded u/s 108 of the Customs Act that they had carried the said seized foreign origin smuggled gold bullions from Howrah to New Delhi and on the way at Patna Railway Junction, they were caught by the officers of DRI, Patna and seized the said foreign origin gold bullions weighing 12577.100 grams, which was recovered from their possession. They also accepted that the recovered items are of foreign origin and smuggled gold bullions, which were being transported from Bangladesh to Hawrah (India) and thereafter from Hawrah to Delhi through off-rout.

9. Taking a lenient view in cases involving huge quantity of smuggled gold will be detrimental to the steps taken by Govt. 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.

10. Further, as per Section 102 of the Customs Act, "When any officer of customs is about to search any person under the provisions of Section 100 or Section 101, the officer of the customs shall, if such person so requires take him without un-necessary delay to the nearest gazetted officer of customs or magistrate". At the time of serving notice u/s 102 of the Customs Act, both the petitioners were given option about their

right to get themselves searched before a Magistrate or a Departmental Gazetted Officer, and thereafter, they opted for search before Departmental Gazetted Officer. So their searched were made individually before Departmental Gazetted Officer in presence of two independent witnesses.

11. There is complete violation of Section 32, 33, 34, 46 and 47 of the Customs Act and the notification issued under the Act ibid, therefore, liable to confiscation u/s 111 and 120 of the Customs Act and the offence committed by both the petitioners was punishable under Section 135 (1)(a) and 135(1)(b) of the Customs Act.

12. During investigation, so many corroborative evidences emerged against both the petitioners. During investigation, the residential address of petitioner no. 1 could not be traced out.

14. Having heard the learned counsel for the parties and considering the fact that both the petitioners were caught red handed by the team of DRI and they were indulged in smuggling of foreign origin gold, this court is not inclined to enlarge the petitioners on bail and, as such, their prayer for bail stands rejected.

15. The trial court is directed to expedite and

conclude the trial.

(Sunil Kumar Panwar, J)

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