# IN THE HIGH COURT OF JUDICATURE AT PATNA
**CRIMINAL MISCELLANEOUS No.72548 of 2023**

Arising Out of PS. Case No.-361 Year-2022 Thana- ECONOMIC OFFENCES, BIHAR District- Patna

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Raj Kumar Son Of Gopal Prasad Seth Village- Kazipura, Sasaram, Ps -SASARAM Town, Sasaram, Dist -ROHTAS

... ... Petitioner/s

Versus

1. The Union Of India Through The Principal Commissioner Customs, C.R. Building, B.C. Patel Path, Patn Bihar
2. The Deputy Director Of Revenue Intelligence, C.R. Building B.C. Patel Path, Patna Bihar
3. The Director Revenue Intelligence, C.R. Building, B.C. Patel Path, Patna Bihar

... ... Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Akhilesh Dutta Verma, Advocate

For the Opposite Party/s : Dr. Krishna Nandan Singh (Asg)
Mr. Prabhar Kumar Singh, Advocate

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH**

ORAL ORDER

3 29-02-2024 Heard learned counsel for the parties.

2. Petitioner apprehends arrest in a case registered for the offences punishable under Sections 135(1)(a), 135(1)(b) for violation of Sections 7, 46 and 47 of the Customs Act, 1962 read with Section 3(2) of the Foreign Trade (Development and Regulation) Act, 1992.

3. As per the prosecution case, three F.I.R. named accused persons were apprehended with gold weighing 1982.340 grams smuggled from Bangladesh. Name of the petitioner transpired during the investigation.

4. Learned counsel for the petitioner submits that petitioner is not named in the F.I.R. and his name transpired only on confessional statement of co-accused Rajan Kumar Soni during the investigation. Petitioner is owner of the shop namely M/S R.K. Traders, Kazipura, Sasaram which is a registered firm under GST having GSTIN No. 10ENAPK1291J1ZB. The said firm is income tax payee and is regularly filing income tax return since its inception. It is further submitted that petitioner has produced all relevant documents and apprised the authority that the gold bullion/biscuit in question are refined form of validly purchased gold jewellery from a registered firm of Coimbatore, Tamil Nadu namely Sri HG Jewels which is evident from the Tax Invoice No. GS036/2022-23 dated 14.05.2022 in favour of M/S R.K. Traders, Kazipura, Sasaram but the DRI authorities did not pay any heed and made alleged seizure of the said 2 Gold Biscuits collectively valued at Ar. 36,56,953/-. He submits that on 28.06.2022, brother of the petitioner namely Rajan Kumar Soni proceeded for Kolkata for the purpose of refining the jewelleries purchased from Sri HG Jewels, Coimbatore, Tamil Nadu which during journey somehow got damaged and for making new jewellery the damaged jewelleries has to be refined first as condition

precedent before giving shape of any new ornaments which fact is amply from mere perusal of Debit Note for Job Work issued by the R.K. Traders in favour of M/S Anant Gold and Silver Refinery dated 28.06.2022 who in turn issued received voucher No. 11 giving details of the Fine Gold. In the present case, 2 pieces of refined primary gold biscuit were allegedly seized by the DRI authorities on the ground of its being smuggled from Bangladesh into India, however such stand of the DRI authorities is absolutely improper and incorrect and merely based on conjecture and surmises. There is no iota of evidence that the seized two gold biscuits bears any mark of foreign origin/smuggled gold, however before effecting seizure the petitioner had produced all relevant papers pertaining to gold under seizure but all efforts made on his behalf went in vain. The department did not prove that the goods were of foreign origin rather in the light of the Invoice issued by the Registered Firm the allegation made against the petitioner falls on the ground. It is further submitted that against the arbitrary seizure of validly purchased gold the petitioner approached the learned Joint Commissioner Customs, Patna whereby the authority has been requested to release his Primary Gold weighting 700.000 grams valued at Rs. 36,56,963/- forthwith which fact is amply evident from the release application filed by the petitioner dated 01.08.2022 (Annexure-6). The value of the seized two biscuits recovered from the possession of the petitioner comes to the tune of Rs. 36,56,953/- only (Serial No. 12 to 13 of the seizure list) which is obviously much less than Rs. 1 crore, hence as per the provision laid down under Customs Act the offence itself is bailable but the DRI authorities just with a view to give a different colour to the case has issued only one composite seizure list against the recovery of 13 biscuits from the possession of three different persons and furthermore, when the recipients of the said 13 biscuits are three different firms having separate GST numbers etc. In such circumstance, how three different cases of three different Registered Firms can be clubbed together which in itself put a question mark, however such action in itself smacks lot of mischief on the part of DRI authorities that just with a view to make out the offence non-bailable, deliberately such strategy has been adopted by them which is absolutely absurd, a nullity and reflects red-tapism in as much as high handedness on their part. It is also worth mentioning that since the abolition of the Gold Control Act, 1968 in June 1990, there is no restriction of taking primary gold from one part of the country to other part. The gold bars were intercepted in the Railway Station of Gaya which is withing the Indian territory. Under the circumstances, the Primary Gold could not be seized by the DRI authorities. The seizure itself is illegal, improper and not tenable in the eye of law and the petitioner is claimed the same before the Custom authorities to release the seized goods. Moreover, one of the co-accused namely Sushil Kumar Raj @ Sonu whose name figured upon the confessional statement of one Ashish Raj has already been granted anticipatory bail by this Hon'ble Court *vide* order dated 20.09.2023 passed in Cr. Misc. No. 8751 of 2023. He lastly submits that there is no allegation to tampering with the evidence against the petitioner and charge-sheet has already been submitted. Petitioner claims clean antecedent.

5. Learned counsel for the opposite parties vehemently opposes the bail application.

6. Considering the submissions made on behalf of the parties and materials available on record and the facts that there is no allegation of tampering with evidence, chargesheet has already been submitted and cognizance has been taken coupled with the fact that petitioner claims clean antecedent, this anticipatory bail is allowed and it is ordered that let the above named petitioner in the event of his arrest/surrender before the

court below within a period of six weeks from today, be enlarged on bail on furnishing bail-bond of Rs. 10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of Chief Judicial Magistrate, East Chmaparan, Motihari in connection with Turkauliya P. S. Case No. 59 of 2023, subject to condition as laid down under Section 438(2) of the Code of Criminal Procedure along with the following conditions:

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

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

**(Prabhat Kumar Singh, J)**

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