14.08.2024
Sl. No. 127.
M/L.
Mithun
Ct.No.5

WPA 16321 of 2024

Azaharuddin Mohammad
Vs.
The Manager, Airport Authority of India, Netaji Subhash Chandra Bose International Airport, Dum Dum, Kolkata & Ors.

Mr. Khwaja Abdur Raheman,
Mr. Sumit Banerejee,
Ms. Puspa Rani Jaiswara
..for the petitioner.
Mr. Bhaskar Prosad Banerjee,
Ms. Ekta Sinha
…for the CGST & CX.
Mr. Ravi Prasad Mukherjee,
Ms. Sayani Roy Chowdhury
…for respondent nos.2 & 5.

1. Affidavit-of-service filed on behalf of the petitioners is taken on record.

2. The present writ petition has been filed, inter alia, praying for quashing of the Customs Case being F No.S1 (VII)-53/2024 (AIU) dated 28th February, 2024. The petitioner also prays for direction upon the respondent authorities to preserve all the CCTV Footages and other documents relating to the aforesaid case. Record would reveal that on 28th February, 2024 on the basis of the spot intelligence, the petitioner who had arrived at the N.S.C.B. International Airport, Kolkata from Bangkok by Spicejet flight No.SG-84 was intercepted by the

Officers of Air Intelligence Unit, NSCB International Airport, Kolkata, when he attempted to cross the green channel of the arrival hall at the Airport and was proceeding towards the exit gate. Upon search, one piece of yellow metallic chain, one piece of yellow metallic Kada and one piece of yellow metallic ring believed to be made of 24 carat gold of foreign origin collectively weighing 224.800 grams was detected to be concealed inside the cloth worn by the petitioner. Since, according to the respondents, the petitioner could not produce any legitimate documents in support of his possession and acquisition of importation of the recovered gold items and since, the petitioner did not declare the recovered gold items before the Customs Authorities upon the valuation of gold being certified by a valuer, the same was recovered from the petitioner and seized under the provision of Section 110(1) of the Customs Act, 1962 (hereinafter referred to as the "said Act").

3. Mr. Raheman, learned Advocate on behalf of the petitioner, however, submits that the petitioner was in fact in the red channel when the aforesaid search operation was conducted. He would submit that if the CCTV Footage is examined, truth will come to the light. A request for retaining the CCTV Footage

was made on 2nd April, 2024. He submits that the petitioner is participating in the enquiry and had in response to a summons issued by the Superintendent/Senior Intelligence Officer of the Customs Authorities had duly appeared before him on 30th May, 2024 at 11:30 am. He insists that the gold which has been seized from him should be returned, as the petitioner is the owner of such gold, upon payment of ordinary charges without imposing any penalty.

4. Mr. Banerjee, learned Advocate appearing on behalf of the respondents would however submit that the circumstances under which the seizure had been effected would corroborate from the order passed under Section 110(1) of the said Act dated 28th February, 2024. Further proceedings under Section 124 of the said Act had been initiated. The same is in progress. He submits that the said Act itself provides for provisional release of goods so seized. The petitioner has not applied for provisional release. In the event, the petitioner makes any application, same shall be considered by the respondents in accordance with law. He submits that it is premature at this stage to even consider the prayer for quashing the Customs Case No. being F No.S1 (VII)-53/2024 (AIU) dated

28th February, 2024. No case of interference has been made out. The writ petition should be dismissed.

5. Mr. Mukherjee, learned Advocate appearing on behalf of the Union of India and the CISF Authorities would submit that in ordinary course the CCTV Footage is retained for a period of 30 days. In this case, the request for retaining CCTV Footage was made only on 2nd April, 2024. By such time, the relevant CCTV Footage stood automatically deleted and, as such, there is no scope to retain the CCTV Footage.

6. Having heard the learned Advocate of the respective parties and having considered the entire materials on record, I find that in the instant case an order has been passed on 28th February, 2024 under Section 110(1) of the said Act. I also find that no application for provisional release of the goods has been made by the petitioner. Since summons has already been issued under Section 108 of the said Act, on 18th May, 2024 it shall not be proper at this stage to interfere with the process of investigation. The same shall however, not stand on the way of the petitioner for making an application for provisional release, if so advised. In so far as the preserving the CCTV Footage is concerned, I do not find that any appropriate application has been made before the

Customs Authorities. Although, the earlier representation dated 2nd April, 2024 appears to have been made by the petitioner, however, going by the stand taken by the respondents, it would be difficult at this stage to direct the respondents to retain the CCTV Footage. The petitioner has also approached this Court on 24th June, 2024, i.e., after 90 days from the date of the incident. Without going into the controversy whether the CCTV Footage gets automatically deleted on the expiry of the 30 days, I am of the view that if the CCTV Footage is still available, the respondents should retain the same for the purpose of assisting the investigation.

6. With the above direction, the writ petition is disposed of.

7. There shall be no order as to costs.

8. All parties shall act on the basis of the server copy of this order duly downloaded from this Court's official website.

(Raja Basu Chowdhury, J.)