**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR.JUSTICE C.S.DIAS**

**TUESDAY, THE 30TH DAY OF JULY 2024 / 8TH SRAVANA, 1946**

**BAIL APPL. NO. 3741 OF 2024**

**OCCURRENCE REPORT NO.1/2024 OF THE DIRECTORATE OF REVENUE INTELLIGENCE, KOCHI, Ernakulam**

**PETITIONER/S:**

**MUHAMMED RIYAS T.K,**
**AGED 37 YEARS**
**S/O. MOIDUNNI T.K,THRIPPANGAVIL HOUSE, KALAPPURAM P.O.,PALAKKAD, PIN - 679308**

**BY ADVS.**
**MANU TOM**
**BALAMURALI K.P.**
**RENIL IQUBAL K.**
**HARIPRIYA.M**
**AMAL C. PETER**

**RESPONDENT/S:**

**THE SENIOR INTELLIGENCE OFFICER,**
**DIRECTORATE OF REVENUE INTELLIGENCE (DRI), COCHIN ZONAL OFFICE, PALLINADA, PALARIVATTOM' KERALA., PIN – 682025**

**BY ADV SREELAL N.WARRIER**

**THIS BAIL APPLICATION HAVING FINALLY HEARD ON 19.07.2024, THE COURT ON 30.7.2024 PASSED THE FOLLOWING:**

# C.S.DIAS,J

==========

## Bail Application No.3741 of 2024

---

**Dated this the 30th day of July, 2024**

**O R D E R**

The application is filed under Section 438 of the Code of Criminal Procedure, 1973*('Code', for the sake of brevity)*, for an order of pre-arrest bail.

2. The petitioner apprehends arrest in O.R. No.DRI/CoZU/CHN/01/ENQ-01/2024 of the Directorate of Revenue Intelligence, Zonal Unit, Cochin.

3. The concise case of the respondent is that: the officers of the respondent learnt that a gang was indulging in smuggling of gold from Abu Dhabi to India by using carrier passengers by way of rectum concealment of gold in compound form. The petitioner is suspected to be the mastermind and main sponsor of

the gang. Consequently, the petitioner was served with multiple summons under Sec.108 of the Customs Act, 1962. But, the petitioner is not co-operating with the investigation and is absconding from his known addresses of business and residence. Acting on an intelligence information, on 8.2.2024, the officers of the respondent intercepted the fifth accused who arrived from Abu Dhabi and conducted a body search on him. 910 grams of gold in compound form was recovered from him. Based on his deposition, the first accused, who had gone to the airport to collect the smuggled gold from the fifth accused, was intercepted and his vehicle was searched. In the search, three oval shaped balls containing gold paste weighing 910 grams were also seized. He stated that he had collected the same from the fourth accused as per the instructions of one Santhosh of Abu Dhabi. During the interrogation of the first accused, he stated that Santhosh had

directed him to collect the gold from the third accused who would be arriving on 8.2.2024. He also stated that one more carrier would be arriving in the Trivandrum International Airport. The second accused was directed to collect the gold in the compound form from the arriving passenger. In the meantime, a person named Ishak Malekudy Ibrahim was intercepted and 910 grams of gold in compound form was seized from him. In the meantime, four oval shaped balls containing 1075 grams of gold paste was recovered from the possession of the second accused. During his interrogation, he stated that he was directed to deliver the gold to Riyas (petitioner) of Mehrish Jewellary, Koppam. Based on the further disclosures made by the accused and searches conducted at Koppam, currency worth Rs.26/- Lakh and gold compound weighing 540 grams were seized from a premises near to Mehrish Jewellary. In the search conducted at Mehrish

Jewellary, Rs.2,15,390/- and foreign currency of different denominations, equivalent to Rs.3,39,098/-, gold coins of 22 Ct purity (17 Nos x 8 grams), 2 Nos of gold discs 24 Ct (37 grams x 2) and one gold chain (22 Ct – 12 grams) valued at Rs.13,34,516/- were also seized. A search was conducted at the residence of Meharose, the brother of Riyas, and currency worth Rs.3,66,500/- and documents pertaining to gold smuggling and a car were seized. The gold in paste form was recovered from various persons was melted and 4050 grams of 24 carat pure gold valued at Rs.2.6 crore was recovered. The accused could not produce any documents to prove the acquisition of the above contraband articles. The accused stated that the gold ornaments were intended to be handed over to Riyas. They also admitted that they had handed over smuggled gold to Riyas on previous occasions. Riyas has been identified by the accused. The accused 1 to 5

have been placed under arrest by the Intelligence Officer of the respondent. During the course of investigation, searches have been conducted and incriminating materials have been recovered. The investigation so far indicates that the Riyas is one of the masterminds of the entire operation and the key operator of the smuggling syndicate. He appears to have been directly involved in delivering gold weighing 4050 grams worth Rs.2.60/- crore, which was seized by the respondent on 8.2.2024.

4. Heard; Sri. Manu Tom, the learned counsel appearing for the petitioner and Sri. Sreelal N.Warrier, the learned Standing Counsel appearing for the respondent.

5. The learned counsel for the petitioner strenuously argued that the petitioner is totally innocent of the accusations levelled against him. There is no material to prove the petitioner’s involvement in

the crime. The petitioner is being summoned by the respondent solely on the basis of the confession statements made by the accused in the case, which is inadmissible in law. Even if the allegations in the occurrence report are taken on its face value, no offence would be attracted against the petitioner. The petitioner is apprehensive that, if he appears before the respondent, he would be arrested, subjected to custodial torture and remanded to judicial custody. The respondent cannot be heard to say that the application is premature because of the decision in **Union of India v. Padam Narain Aggarwal & Ors**. [(2008) 13 SCC 305]. The said decision is not applicable to the facts of the case in view of the amendment to the Act. There is no statutory bar in passing an order of pre-arrest bail. The accused 1 to 4, who are the main accused, have been arrested and were remanded to judicial custody. They have already

been enlarged on bail. The major part of the investigation is already complete. Therefore, the petitioner's custodial interrogation is not necessary. The petitioner is willing to abide by any stringent condition that may be imposed by this Court. Hence, the application may be allowed.

6. The learned Standing Counsel for the respondent vehemently opposed the application. He submitted that the application is not maintainable in law as the respondent has only issued a notice to the petitioner under Section 108 of the Act, to record his statement, which is a statutory power. It is trite law in ***Union of India v. Padam Narain Aggarwal & Ors.*** [(2008)13 SCC 305] and ***State of Gujarat v. Choodamani Parmeswaran Iyer & Anr.***[MANU/SC/992/2023] that an application for pre-arrest bail is premature when a notice is issued under Section 108 of the Act. He submitted that the

petitioner has been evading the process of law and has refused to appear before the respondent to record his statement. He contended that, as per the materials available on record, there are incriminating materials to substantiate the petitioner's involvement in the crime. Even though summons have been served on the petitioner, he has willfully refused to appear before the respondent. The petitioner's statement is crucial for the further progress of the case. If the petitioner is granted an order of pre-arrest bail, he would destroy the evidence, influence the witnesses, and torpedo the entire investigation. Hence, the application may be dismissed.

7. The prosecution allegation against the petitioner, as already referred to above, is that, he is the mastermind and key operator in a gold smuggling syndicate that has been recruiting carrier passengers and has indulged in smuggling huge quantity of gold

into the Country for a considerable period of time, which is determinal to the economic stability of the nation. Consequently, the respondent has issued a notice under Sec.108 of the Act to the petitioner, to record his statement. But, the petitioner is not responding to the summons.

8. On the contrary, the petitioner states that he is not involved in the case. If he appears before the respondent, he would be arrested and subjected to custodial torture, and then be remanded to judicial custody.

9. The Constitutional Bench of the Hon'ble Supreme Court in ***Ramesh Chandra Metha v. State of West Bengal*** [AIR 1970 SC 940] has declared that a person who is called upon to make a statement before the Customs Authorities cannot be said to be accused of an offence. If a person is called upon to make a statement under Section 108 of the Act,

pursuant to a summons, he is bound to comply with such directions.

10. The above view has been reiterated by the Honourable Supreme Court in ***Assistant Collector of Central Excise, Rajamundry v. Duncan Agro Industries Ltd.*** [(2000) 7 SCC 53] that Section 108 of the Act does not contemplate any magisterial intervention. It only contemplates the recording of a statement by the officer of the Customs.

11. In ***Padam Narain Aggarwal***'s case (supra), the Honourable Supreme Court has held that a statement recorded under Section 108 of the Act is distinct and different from the statement recorded by a Police Officer during the course of investigation under the Code. When a notice under Section 108 of the Act is issued to a person to record his statement, an application for pre-arrest bail is premature, because it illegally obstructs, interferes and curtails the authority

of the Customs Officers from exercising their statutory power.

12. The above view has been reiterated recently by the Honourable Supreme Court in ***Vijaykumar Gopichand Ramachandani v. Amar Sadhuram Mulchandani and Others*** [2022 KHC Online 8031].

13. On an overall conspectus of the facts, the rival submissions made across the Bar, the materials placed on record, especially the enunciation of law in the above referred decisions, and on finding that the respondent has only issued a notice to the petitioner under Section 108 of the Act, directing him to appear before the respondent for the purpose of recording his statement, I am of the firm view that the application for pre-arrest bail is premature. Nonetheless, if the respondent proceeds to arrest the petitioner, such power shall be exercised, only if the competent authority has reasons to believe that the petitioner has

committed the offences punishable under Sections 135, 135A,136 and/or 137 of the Act.

With the above observations, the bail application is dismissed.

SD/-

**C.S.DIAS,JUDGE**

Sks/29.7.2024