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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 5821/2019 & CRL.M.A. 3211/2020**

**AIR CUSTOMS IGI AIRPORT
NEW DELHI**

.....Petitioner

Through: Mr. Satish Aggarwala, Sr.
Standing Counsel, Ms.
Mala Sharma, SPP, Mr.
Gagan Vaswani, Ms. Aditi
Mittal, Ms. Gunjan
Sharma, Ms. Priyanka
Ahlawat, Mr. Anil Kumar
Dhaka, Mr. Rajeev
Grover, Mr. Rajender
Kumar Chaurasia, Mr.
Nikhil Kumar, Mr. Aadesh
Kumar, Mr. Pradeep
Tanwar, Mr. Shyam
Sunder Bansal, Ms. Jayati
Jaidka & Ms. Neha
Verma, Advocates
(Through V.C.).

versus

GREESHM SHARMA

.....Respondent

Through: Ms. Sneha Arya, Ms.
Meenakshi Sahu, Ms.
Harshi Gaur & Ms.
Roopini Nandan, Ms.
Pankhuri Tiwari,
Advocates alongwith
Respondent-in-
Person/Greeshm Sharma
(Through V.C.).

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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26.07.2024

1. The present petition is filed under Section 482 of the Code

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of Criminal Procedure, 1973 ('CrPC') challenging the order dated 02.09.2019 (hereafter '**impugned order**') passed by the learned Chief Metropolitan Magistrate ('CMM'), New Delhi in *Air Customs v. Greeshm Sharma*.

2. It is the case of the prosecution that 232 gold rings collectively weighing 2001 grams, valued at ₹59,51,114 /- was found from the possession of one, Raju Singh Sachdeva on his arrival at T1, IGI Airport, New Delhi on 16.05.2019. On the basis of a disclosure statement given by Raju Singh Sachdeva, it was stated that the gold rings were to be delivered to the present respondent at a place of the respondent's choice.

3. The respondent was arrested on 01.07.2019. Concededly, the investigation was not completed and the complaint was not filed by the petitioner within sixty days. This led to the respondent filing an application under Section 167(2) of the CrPC seeking statutory bail. The learned CMM, by impugned order, noted the concession given by the petitioner department that the complaint has not been filed within the statutory period and allowed the application filed by the respondent and admitted him on bail on furnishing a bail bond for a sum of ₹1,00,000/- with one surety in the like amount.

4. The petitioner department has challenged the impugned order raising only one ground. It is contended that while the respondent was in custody, detention order was passed under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 ('**COFEPOSA**') and no order under Section 167(2) could have been passed by virtue of Section 12(6) of the COFEPOSA.

5. Section 12(6) of the COFEPOSA reads as under :



“12. Temporary release of persons detained.–

xxxx

xxxx

xxxx

(6) Notwithstanding anything contained in any other law and save as otherwise provided in this section, no person against whom a detention order made under this Act is in force shall be released whether on bail or bail bond or otherwise.”

6. Section 12(6) starts with a *non absente* clause that no person against whom detention order is made under this Act is in force shall be released on bail or bail bond or otherwise.

7. Section 167(2)(a)(ii) of the CrPC is a beneficial provision granting relief to the accused where the investigating agency is not able to complete the investigation within a period of sixty or ninety days as the case may be. The right to apply for statutory bail under Section 167(2)(a)(ii) has been recognized by the Hon’ble Apex Court as a Constitutional right.

8. From the reply filed by the petitioner department before the learned CMM, it is apparent that the fact that a detention order under the COFEPOSA was in force against the respondent was not brought to the knowledge of the Court. In such circumstances, it cannot be said that the learned CMM passed an order contrary to the law.

9. It is also significant to note that Section 12(6) of the COFEPOSA bars the release of the detainee. However, the same does not put any bar on the detainee being granted bail. Pursuant to any order admitting the accused person on bail, the release from the custody is dependent upon furnishing a bond and surety as may be directed by the learned Court. Any order of admitting a person on bail does not amount to his automatic release. Therefore, even if the person is admitted on bail, his release would be dependent upon the other provisions of law as may be applicable. For example, if the person is in custody in two cases,

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the grant of bail in one case would not lead to his release until he is granted bail in the other case. Similarly, only because the bail has been granted, the same will not amount to the release when the person is in detention pursuant to detention order under the COFEPOSA.

10. It is not the case of the petitioner department that the respondent was released from custody thereby making the detention order under the COFEPOSA infructuous, no such averment or facts have been pleaded in the present petition. Thus, the argument that no order admitting the accused on bail can be passed when the detention order against the said person is in force is erroneous. As noted above, Section 16(2) of the COFEPOSA only bars the release of the detainee.

11. On being pointedly asked, as to the status of the complaint, Mr. Satish Aggarwala, the learned Senior Standing Counsel, for the petitioner department states that same has still not been filed.

12. The reason for contesting the present case for such a long period of time is not clear. No other argument has been raised by the petitioner department for cancelling the bail except that the same is barred by virtue of Section 16(2) of the COFEPOSA.

13. It appears that in the initial stages, serious allegations were made that total gold weighing 2001 grams was found to be illegally smuggled into India from Bangkok. However, no complaint has been filed till date. The department is fighting the present case from the last five years only in regard to the custody of the respondent and is obviously not concerned with taking the case to the logical conclusion by filing an appropriate complaint. It is apparent that the only interest of the department is in the custody of the accused and not in the trial of the case. Filing of proceedings in such circumstances, is an abuse of process of the



Court.

14. The present petition is therefore dismissed. The petitioner department is also directed to pay a cost of ₹25,000/-, to be deposited with the Delhi High Court Legal Services Committee.

15. The department is at liberty to recover the cost from the officer responsible for the delay.

AMIT MAHAJAN, J

JULY 26, 2024

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