IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.44852 of 2024

Arising Out of PS. Case No.-1 Year-2020 Thana- D.R.I District- Patna

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1. MANOJ KUMAR @ MANOJ KUMAR SETH SON OF BHAGAUTI PRASAD SETH RESIDENT OF FLAT NO. 2401 FLORENTIA TOWER 2, MAHAGUN MIRABELLA, SECTOR 79, NODIA, DISTRICT - GAUTAM BHUDDHA NAGAR, UTTAR PRADESH
2. BALWANT RAJ SONI SON OF MANOJ KUMAR SETH RESIDENT OF FLAT NO. 2401 FLORENTIA TOWER 2, MAHAGUN MIRABELLA, SECTOR 79, NODIA, DISTRICT - GAUTAM BHUDDHA NAGAR, UTTAR PRADESH

... ... Petitioner/s

Versus

THE UNION OF INDIA THROUGH DIRECTOR OF REVENUE INTELLIGENCE, REGIONAL UNIT, PATNA, BIHAR BIHAR

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Abhirup, Adv.
		Mr. Vijay Kumar Srivastava, Adv.
For the Opposite Party/s	:	Mr. K.N. Singh (A.S.G.)
For the DRI	:	Mr. Anshuman Singh, Sr. S.C.

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CORAM: HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA

ORAL ORDER

5 12-05-2025 Heard Mr. Abhirup, learned counsel for the petitioners and Mr. Anshuman Singh, learned counsel appearing on behalf of the Directorate Revenue Intelligence (DRI).

2. A detailed counter-affidavit has been filed on behalf of the Directorate of Revenue Intelligence, Regional Unit Patna.

3. The prosecution case is based upon a complaint, filed by the complainant, Senior Intelligence Officer, Directorate of Revenue Intelligence, Patna that on 10.01.2020, a specific information was received regarding smuggling of foreign origin

gold which was being smuggled into India from Bangladesh and was being transported from Kolkata to Jaunpur via Gaya Railway Station. Acting upon the said information, a team of officers of DRI, Patna reached Gaya Railway Station and two persons, who disclosed their names as Rajesh Kumar Yadav and Umanath were apprehended from the general compartment of the train at 4:41 AM in the presence of two independent witnesses. The said persons admitted the possession of smuggled foreign origin gold biscuits/bars and small pieces of gold and admitted that they were carrying 2-2 kgs each of the gold bars without any purchase or import documents.

4. Learned counsel for the petitioners submits that the names of the petitioners have transpired in the instant case on the basis of the confessional statements of the apprehended accused persons, namely, Rajesh Kumar Yadav and Umanath. As a matter of fact, the petitioner no.1, Manoj Kumar Seth has a jewellery shop in Jaunpur, Uttar Pradesh and he had purchased the alleged gold biscuits from M/s Chandan Enterprises, New Delhi by an invoice dated 01.01.2020 and 03.01.2020 and both the invoices are brought on record by way of Annexure-P/2 series. The apprehended accused persons, who are the employees of the petitioners, went to Kolkata on 09.01.2020 for

the purchase of gold biscuits, but due to enhancement of exchange rate, they were returning back and when they reached Gaya Junction, they were intercepted by the DRI team who seized the said gold biscuits ignoring the invoices dated 06.01.2020 and 09.01.2020 (Annexure-P/3 series).

5. The learned counsel for the petitioners has also brought on record the notices which were sent by the said M/s Chandan Enterprises demanding an amount of Rs. 15,760,000/- vide letters dated 12.03.2020, 30.06.2020, 09.03.2021 and 05.12.2021 and a reply was also sent on behalf of petitioner no.1 through his lawyer seeking further time for making payment of the said dues. These notices and the reply of notices have been brought on record to substantiate the claim that the petitioners and M/s Chandan Enterprises were in business relations with each other. It is further submitted that petitioner no.1 vide his letter dated 21.01.2020 claimed the ownership of the seized smuggled gold stating that it belonged to M/s Gandhi & Sons which was legitimately purchased from M/s Chandan Enterprises by valid invoices. However, an order for absolute confiscation was issued by the adjudicating authority under Section 111 of the Customs Act, 1962 imposing penalty on the accused persons.

6. It is further submitted by learned counsel for the petitioners that a Custom Appeal No. 75414 of 2022 was filed before the Custom Excise and Service Tax Appellate Tribunal, Kolkata against an order passed by the Commissioner (Appeals), Customs, Central GST and Central Excise, Patna regarding the petitioners' ownership of the alleged confiscated gold biscuits and the learned Appellate Tribunal Kolkata set aside the order dated 29.04.2022 of the Commissioner Appeals, Customs, Central Governemnt GST, Central Excise, Patna vide order dated 18.05.2023 which has been brought on record by way of Annexure-P/7 to the present petition. It would appear from the said judgment of the Appellate Tribunal, Kolkata that the investigation has not brought any concrete evidence to show that the gold was smuggled into the country from Bangladesh and the same is only based on assumption and presumptions.

7. It has further been submitted on behalf of the petitioners that the gold bars seized is not of 99.99 purity and there is no foreign mark available on them. The investigation also failed to make any enquiry from M/s Chandan Enterprises about the legal purchase of gold.

8. Per contra, learned counsel appearing for the Customs Department submits that the statement of the apprehended

persons were recorded under Section 108 of the Customs Act wherein they have admitted their conscious involvement in the case and have stated themselves to be the staff of the jewellery shop, namely, M/s Gandhi & Sons, Jaunpur, Uttar Pradesh and that the above said gold was carried by them for the petitioner Manoj Kumar Seth, who is the proprietor of the said shop. Despite repeated summons having been issued to the petitioners, they have not cooperated in the investigation.

9. Further, it is informed by learned counsel for the Customs Department that the order of the Appellate Tribunal has been challenged. It is further argued that the petitioners' claim that they have purchased the gold from M/s Chandan Enterprises, Delhi does not stand established as the apprehended co-accused persons have failed to submit copies of such invoices and the invoices were later submitted by petitioner no.1 vide his interim defence reply dated 25.07.2020. Further the case of ***P. Chidambaram Vs. Directorate of Enforcement*** reported in 2019 (9) SCC 24 has also been relied upon to submit that the economic offences constitute a class apart and needs to be visited with a different approach in the matter of bail.

10. Taking note of the rival contentions, it appears that there is a disputed question of fact and the order dated

29.04.2022 passed by the Appellate Tribunal, Kolkata has been passed in favour of the petitioners stating therein that there is no concrete evidence on record to show that the gold was smuggled into the country from Bangladesh and it would be incorrect to rely on the statements of the co-accused persons which were subsequently even retracted. This Court is conscious of the decision of the Apex Court but is faced by a judicial order of the Tribunal which as of today does not conform to the view that the petitioners have committed an offence in the eyes of law. Further, the petitioners have their established business and hence, there is no possibility of the petitioners to flee from the course of justice. Another parameter which also needs consideration is that the petitioners have no criminal antecedent and the gold is already in the custody of the customs department and the other investigation would be based upon documentary evidence. Taking the same into consideration, a custodial interrogation may not be required and there does not seem to be flight risk of the petitioners.

11. In such view of the matter, I am inclined to grant the privilege of anticipatory bail to the petitioners. Let the petitioners, above named, in the event of their arrest or surrender before the Court below within four weeks, be released

on bail on furnishing bail bond of Rs. 10,000/- (ten thousand) each with two sureties of the like amount each to the satisfaction of learned Special Judge, Economic Offence, Patna in connection with Complaint Case No. 1(c) of 2020, subject to the condition as laid down under Section 438 (2) of the Cr.P.C/ 482 (2) of the BNSS, 2023 and the further conditions that

i) One of the bailors will be family members or own close relatives of the petitioners who will give an affidavit of genealogy as to how he is related to the petitioners.

ii) The petitioners shall co-operate with the investigating agency in the process of investigation.

12. However, it is made clear that if any of the above-mentioned conditions is violated by the petitioners and if it is found on substantial grounds that the petitioners are not cooperating in the investigation, the learned Court below would take steps to cancel the bail bonds of the petitioners.

(Soni Shrivastava, J)

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