IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.77688 of 2024

Arising Out of PS. Case No.-10 Year-2024 Thana- D.R.I District- Patna

==

Bharat Prasad Yadav, S/O Late Somari Mahato, Resident of Village-Ghangrikura, P.S.- Tisri, Distt- Giridih (Jharkhand)-815313

... ... Petitioner

Versus

The Directorate Revenue Intelligence, Regional Unit, Patna

... ... Opposite Party/s

==

Appearance :

For the Petitioners	:	Mr. Pawan Kumar Singh, Advocate Mr. Kamlesh Kumar, Advocate
For U.O.I. (DRI)	:	Mr. Sanchay Srivastava, Sr. SC (DRI) Mr. Ankit Kumar Singh, Jr. S.C. (DRI) Mr. Sushant Srivastava, Advocate Mr. Ashish Kumar Palit, Advocate, AC

==

CORAM: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY

CAV ORDER

5 27-03-2025 Heard Mr. Pawan Kumar Singh, learned counsel for the petitioner and Mr. Sanchay Srivastava, learned Senior Standing Counsel for the DRI.

2. The petitioner has prayed for bail in connection with D.R.I. Case No. 32(0)/2024 arising out of DRI Patna Case No. 10/2024-2025 registered for the offence punishable under Sections 135(1)(a), 135(1)(b) of the Custom Act and Section 135(1)(i)(A) of the Customs Act.

3. The case of the prosecution is that two persons, namely, Dharmendra Kumar and Bharat Prasad Yadav (the petitioner) were inside a swift car bearing registration No. JH09-AV-6897. The police had information that they are carrying

gold. On being asked about the said gold jewellery, Bharat Prasad Yadav said that he was carrying the gold jewellery made of smuggled gold of foreign origin which was concealed in secret cavity made inside the back of the rear seat of the said car. During inquiry, Bharat Prasad Yadav told that he was the owner of the said jewellery and did not have any legal documents regarding the said jewellery. On search, a secret cavity was found inside the back of the rear seat of the said car. Eleven packets were recovered from the said cavity which were made of polythene bag. From the said packets, assorted gold jewellery was recovered. The said packets of the gold jewellery were marked serially. Altogether, 7,979.60 gram of jewellery worth Rs. 4,66,68,897/- was recovered. Bharat Prasad Yadav told that he was going to Patna for selling the said gold jewellery to jewellery shop.

4. Learned counsel appearing on behalf of the petitioner has submitted that petitioner is innocent and has committed no offence. He has been falsely implicated in this case. He has no concern in any way with the alleged recovery. He has got no criminal antecedent and he is languishing in judicial custody since 30.06.2024.

5. The learned counsel for the petitioner has relied on

the judgment of Supreme Court in the case of ***K.I. Pavunny vs. Assistant Collector (HQ), Central Excise reported in (1997) 3 Supreme Court Cases 721***. The Hon'ble Supreme Court has held para A which reads as under:

> *A. Customs Act, 1962 - Ss. 108, 110 and 111 - Person suspected by a Customs Officer of having committed an offence under the Act - Status of - Held, he is not an accused at that stage - He becomes an accused only when summons are issued by a competent Court/Magistrate pursuant to a complaint lodged by the competent Customs Officer - Hence, his statement recorded during an enquiry under S. 108 or during confiscation proceedings is not that of an accused within the meaning of S. 24 of the Evidence Act - Evidence Act, 1872, S. 24 - "Accused" - Meaning and scope - Words and phrases - "Accused"*

6. Learned counsel for the petitioner has placed reliance upon ***Union of India vs. Kisan Ratan Singh*** *2020 SCC Online* Bombay 39, wherein the Hon'ble Bombay High Court has held that :-

> *"Moreover, if I have to simply accept the statement recorded under Section 108 as gospel truth and without any corroboration, I ask myself another question, as to why should anyone then go through a trial. The moment the Customs authorities recorded the statement under section 108, in which the*

accused has confessed about his involvement in carrying contraband gold, the accused could be straightaway sent to jail without the trial court having recorded any evidence or conducting a trial."

7. Learned counsel for the petitioner has also relied on the recent judgment of Hon'ble Apex Court in the case of ***Ratnambar Kaushik vs. Union of India*** 2023 2SCC 621, where the Hon'ble Apex Court was pleased to grant bail to the accused who was involved in the GST evasion to the tune of Rs.15 crores relying upon the above proposition and the relevant paragraphs is reproduced hereinbelow:-

"**8.** *In considering the application for bail, it is noted that the petitioner was arrested on 21.07.2022 and while in custody, the investigation has been completed and the charge-sheet has been filed. Even if it is taken note that the alleged evasion of tax by the petitioner is to the extent as provided under Section 132(1)(l)(i), the punishment provided is, imprisonment which may extend to 5 years and fine. The petitioner has already undergone incarceration for more than four months and completion of trial, in any event, would take some time. Needless to mention that the petitioner if released on bail, is required to adhere to the conditions to be imposed and diligently participate in the trial. Further, in a case of the present nature, the evidence to be tendered by the respondent would essentially be*

> *documentary and electronic. The ocular evidence will be through official witnesses, due to which there can be no apprehension of tampering, intimidating or influencing. Therefore, keeping all these aspects in perspective, in the facts and circumstances of the present case, we find it proper to grant the prayer made by the petitioner.*
>
> ***9.*** *Hence, it is directed that the petitioner be released on bail subject to the conditions to be imposed by the trial court, which among others, shall also include the condition to direct the petitioner to deposit his passport. Further, such other conditions shall also be imposed by the trial court to secure the presence of the petitioner to diligently participate in the trial. It is further directed that the petitioner be produced before the trial court forthwith, to ensure compliance of this order."*

8. Learned counsel for the petitioner has relied on the judgment of Hon'ble Supreme Court in the case of ***Rajasthan vs. Balchand*** reported in 1977 4SCC and ***Sanjay Chandra vs. CBI*** reported in (2012) 1SCC 40, wherein the Hon'ble Apex Court has held that :-

> *"**46.** We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has*

already completed investigation and the charge-sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to ally the apprehension expressed by CBI." (Emphasis supplied)

9. It has also been submitted that the offences under Customs Act are compoundable by the virtue of Section 137(3) and are to be tried summarily. That the Hon’ble High Court in the case of ***Customs vs. Sitaram Aggarwal*** has held that once the offence under the Customs Act, 1962 have been compoundable, there is no reason as to why a person should not be granted bail.

10. The application for bail is opposed by learned Senior Standing Counsel for the DRI and further he submitted that the bail application of other accused persons has already been rejected by another Co-ordinate Bench of this Court *vide* order dated 22.01.2024 in Cr. Misc. No. 68246 of 2023. In this connection, he relied upon a judgment of the Hon'ble Supreme Court in the case of ***Union of India vs. Padam Narain Aggarwal Etc.*** *reported in* ***AIR 2009 SC 254 in Criminal Appeal No. 1575 of 2008 (arising out of SLP (Cri.) No. 2075***

of 2007).

11. Having heard learned counsel for the parties and considering the facts and circumstances of the case, this Court is inclined to enlarge the petitioner on bail. The above named petitioner is directed to be enlarged on bail on furnishing bail bond of Rs. 10,000/- (Rs. ten thousand only) with two sureties of the like amount each to the satisfaction of the learned Special Judge, Economic Offence, Patna in connection with DRI Case No. 32(0)/2024 arising out of DRI Patna Case No. 10 of 2024-2025.

(Ashok Kumar Pandey, J)

lata/-
Sudhanshu/-

U		T	