IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.86557 of 2024

Arising Out of PS. Case No.-3 Year-2024 Thana- D.R.I District- Patna

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Pandurang Baburao Jagatap Son of Baburao Jagatap Resident of H- 3 Ground Floor, Garhwali Mohalla, Laxmi Nagar, East Delhi Delhi -110092

... ... Petitioner/s

Versus

The Union of India Through Abhishek Kamal Senior Intelligence officer DRI Regional Unit Patna india

... ... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Praveen Kumar Agrawal
For the D.R.I : Mr. Sanchay Srivastava
Mr. Ankit Kumar Singh
Mr. Sushant Srivastava
Mr. Ashish Kumar Palit

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CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 05-02-2025 Heard learned counsel for the petitioner and learned counsel for the D.R.I.

2. The petitioner has preferred this application for grant of regular bail in connection with Complaint (DRI) Case No. 27(O) of 2024 arising out of DRI Unit Case No. 03/2024-25 (CIS 8227/2024) for the offences punishable under Sections 135(1)(a) and 135(1)(b) of the Customs Act.

3. As per the prosecution case, 20 pieces of gold bullions weighing 3318 grams worth Rs. 2,44,66,920/- which were smuggled from Myanmar to India were recovered from the possession of the petitioner.

4. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case. Nothing has been recovered from the possession of the petitioner. The petitioner has no concern with the alleged recovery. As per Section 125 of the Customs Act the authority may levy fine in lieu of confiscation and, therefore, it appears from the provisions of Section 11 of the Customs Act gold is not prohibited goods but it is restricted goods and as per Section 125 of the Customs Act in lieu of confiscation fine may be levied. Therefore, as import of gold is not prohibited but restricted subject to prescribed payment of duty, thus alleged recovery of gold is not prohibited goods under Section 2(33) Customs Act but it is restricted goods in view of the judgment of three Judges Bench of the Apex Court in the case of **Commissioner of Customs Vs. Atul Automation Private Limited,(2019) 3 Supreme Court Cases 539**. The petitioner has clean antecedent as stated in para 3 of the bail petition. The petitioner is in custody since 25.05.2024.

5. Learned counsel for the D.R.I. has vehemently opposed the bail petition of the petitioner. It is further submitted that the petitioner's statement was recorded under Section 108 of the Customs Act, 1962 in which he has stated that the said gold bullions were smuggled from Myanmar to India through illegal routes and the co-accused Ranjan Kumar is the owner of the said gold bullions and Rajan Kumar told him that gold bullion/bars of foreign origin were smuggled from Myanmar to Guwahati, then they were melted in a factory and the foreign mark/logo or name of the refinery were erased so that they could not be identified as of foreign origin. It is settled law that the statement recorded under Section 108 of the Customs Act, 1962 before the DRI/Customs officials is admissible in evidence.

6. Considering the aforesaid facts and circumstances of the case as well as the period of custody, the petitioner above-named, is directed to be enlarged on bail on furnishing bail-bond of Rs.20,000/- (Rupees Twenty Thousand) with two sureties of the like amount each to the satisfaction of learned Court of Presiding Officer (Special) Economic Offences Civil Court Patna Sadar, in connection with Complaint (DRI) Case No. 27(o) of 2024 arising out of DRI Unit Case No. 03/2024-25 (CIS 8227/2024), with the conditions ;-

(i). The petitioner is directed to remain physically present before the learned Court below on each and every date, failing which on two consecutive dates without reasonable cause, the bail bond of the petitioner is liable to be cancelled.

(ii). One of the bailors must be a local resident within the jurisdiction of the Learned court concerned.

7. The application stands allowed.

(Chandra Prakash Singh, J)

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