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

% ***Date of decision: 15th May, 2025***

+ **CRL.M.C. 44/2021**

DIRECTORATE OF REVENUE INTELLIGENCE.....Petitioner

Through: Mr. Satish Aggarwala SSC with Mr.
Gagan Vaswani, Advocate.

versus

KHUSHANT NAGPALRespondent

Through: Mr. D.S. Chadha and Mr. Prabjyoti K.
Chadha, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. Petition under Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.P.C.'*) has been filed on behalf of the Petitioner/Directorate of Revenue Intelligence (DRI) against the Order dated 14.12.2020 *vide* which the Respondent-Khushant Nagpal has been granted Bail by the Ld. CMM, Patiala House Courts, New Delhi.

2. ***Briefly stated***, the case of the Petitioner/DRI is that there was a recovery and seizure of 66.400 kg. smuggled gold, having a total market value of Rs.33,21,72,640/-. On 19.11.2020, acting on the intelligence, Petitioner/DRI, DZU had mounted surveillance along with two independent witnesses, at Thiriya Khetal Toll Plaza at Bareilly-Moradabad road from around 7:00 am. At around 7:45 am, a Truck of make Ashok Leyland



bearing Registration No. PB03-BD-8624, was stopped before the Toll Barrier at Bareilly-Moradabad road. Two persons occupying the said Truck, who were identified as Ajay Kumar and Gurucharan Singh, stated that they had come from Guwahati *via* Bareilly. The Truck and the two persons were then taken to DRI Office, CGO Complex, Lodhi Road, New Delhi. They were served Notice under Section 102 of the Customs Act, 1962 (*hereinafter referred to as 'the Act'*). Systematic examination and rummaging of the Truck led to recovery of 200 pieces of yellow metal bars having gross weight of 33.200 kg. The goods were got valued from Jewellery Appraiser, who stated the Gold bars to be of 995 purity and the value was determined as Rs.15,05,47,392/-. The market value of the recovered gold is Rs.16,60,86,320/-. No valid documents for the possession of Gold Bars could be produced by Ajay Kumar and Gurucharan Singh. There was reasonable belief that it was smuggled Gold and liable for confiscation under Section 111 of the Act.

3. In the simultaneous operation, at about 6:15 am on 19.11.2020, another Truck of Eicher make bearing Registration No. HR55-AC-6263 was spotted at Mathura Exit Toll at Yamuna Expressway and was stopped before the Toll Barrier. In this Truck, three persons were present who identified themselves as Yadwinder Singh, Rakesh Kumar and Respondent-Khushant Nagpal. They were all brought to DRI Office, CGO Complex, Lodhi Road, New Delhi. Notice under Section 102 of the Customs Act, 1962 was served upon Yadwinder Singh, Rakesh Kumar and Respondent-Khushant Nagpal. Upon the personal search of the persons apprehended, one Boarding Pass dated 20.10.2020 issued by Air Asia in the name of Yadwinder Singh from



Delhi to Guwahati, parking Receipt of Nilachan Parking and Accommodation Bill dated 16.11.2020 of Priya Guest House, were recovered.

4. On systemic examination of the Truck, it was found that it was loaded with household items such as kitchen utensils, old furniture etc. As per the Permit produced by Yadwinder Singh, the Truck was owned by M/s V.S. Transport, H.No. 270, Block-E, Shitla Colony, Gurgaon, Haryana. Further search was conducted and 200 pieces of yellow metal, which was identified as Gold bars with the purity of 995, were recovered from the fuel tank of the said Truck. The value of the confiscated material as per the Notification dated 13.11.2020 of the Customs, was found to be Rs.15,05,47,392/- while the market value was assessed as Rs.16,60,86,320/-.

5. The Statements of all the five aforesaid persons were recorded under Section 108 of the Act, in which they all voluntarily admitted the recovery and seizure of smuggled Gold, as detailed above.

6. **Petitioner/DRI** further stated that Respondent-Khushant Nagpal in his Statement under 108 of the Act, stated that Surendra Kumar @ Janu had offered him to be a helper cum driver (*Khalasi*) on a Truck from Guwahati to Patiala for Rs.10,000/- for one trip. He along with driver, Gurucharan Singh Multani @ Kalu went to Guwahati in the said Truck. He along with Rakesh Kumar and Yadwinder Singh, were driving the Truck back, when it was apprehended. Surendra Kumar @ Jaanu and Ajay Kumar had flown to Guwahati. He knew Surendra Kumar @ Jaanu through Mrs. Lucky Satija @ Madam, his Maternal Aunty (Mausi) and he knew Rakesh Kumar since childhood. In Guwahati, both the Trucks were parked in Beltola, Guwahati.



Surendra Kumar @ Jannu and Ajay Kumar (his Maus) met him near Beltola, Guwahati on 16.11.2020 and handed over a bag containing the foreign origin gold to Yadwinder Singh, who concealed them in the fuel tank of the Truck. They all then travelled in the Truck, which got apprehended by the officials of the Petitioner/DRI. He further stated that he had WhatsApp communication with Surendra Kumar @ Jaanu and Mrs. Lucky Satija, his Mausi and her PAN Card and Aadhar Card details are available on his phone.

7. Similar statements of the other co-accused were recorded.

8. Petitioner/DRI asserted that the offences committed by the accused persons were punishable under Section 132 and 135 of the Act and they were arrested on 20.11.2020. Bail has been granted to the Respondent-Khushant Nagpal on 14.12.2020.

9. ***Petitioner/DRI aggrieved by the grant of bail, has filed it by way of present Petition, essentially on the ground*** that the bail has been granted on the basis of the young age of the Respondent-Khushant Nagpal. The Ld. CMM has considered the age of the Respondent-Khushant Nagpal being 20 years and the also ill-effect of being confined to jail. However, the gravity of the offence has been overlooked and it has also been ignored that he was an active accomplice in the commission of the offence, as is brought forth from his Statement and of the other co-accused under Section 108 of the Act.

10. Furthermore, the investigation was still pending which factor was not considered by the Ld. CMM while granting bail.

11. It is thus, asserted that the bail granted to the Respondent-Khushant Nagpal, be recalled.



12. Reliance has been placed on by learned Counsel for the Petitioner/DRI on K.I. Pavunny v. Asstt. Collector (HQ), Central Excise Collectorate, (1997) 3 SCC 721; Malvinder Mohan Singh v. State (NCT of Delhi), 2020 SCC OnLine Del 2001; Y.S. Jagan Mohan Reddy v. CBI, (2013) 7 SCC 439; State of Orissa v. Mahimananda Mishra, (2018) 10 SCC 516; Anil Kumar Yadav v. State (NCT of Delhi) (2018) 12 SCC 129; State of U.P. vs. Amarmani Tripathi, (2005) 8 SCC 21; Prahlad Singh Bhati vs. NCT of Delhi, 2001 AIR SCW 1266; Union of India v. Hassan Ali Khan, (2011) 10 SCC 235.

13. ***Learned Counsel on behalf of the Respondent-Khushant Nagpal in his Short Synopsis and oral Arguments*** has submitted that the first ground for cancellation of bail is that investigation is not yet complete and is at a crucial stage. However, the Criminal Complaint No.1254/2021 has already been filed before the Court of Ld. CMM, New Delhi and the trial is pending.

14. The second ground agitated is that the goods were prohibited. However, the Show Cause Notice issued to Respondent-Khushant Nagpal and adjudicated *vide* Order in Original No. DLI/CUSTOM/PREV/AKJJC/519/22-2021, has been challenged by preferring the Appeal which is still pending before the Ld. Commissioner (Appeals).

15. Furthermore, the cancellation has not been sought on the ground of violation of any of condition of Bail. In fact, no condition of Bail has been violated. There is no material to show that Respondent-Khushant Nagpal is likely to commit the offence while on Bail. In the absence of such allegations, material on record, the Petition for cancellation of Bail ought to be dismissed.

16. Reliance has been placed on Superintendent of Customs v. Ahammed



Kabir, 2019 SCC OnLine Ker 4696, Kweon Mihwa vs. Senior Intelligence Officer, DRI, Chennai, CrI. Rc. No. 468 of 2019, Madras High Court (decided on 19.06.2019), Directorate of Enforcement v. Ratul Puri, 2020 SCC OnLine Del 97 and Union of India through Additional Commissioner vs. Subhash s/o Chunni Lal Nayak, S.B. Criminal Bail Cancellation Application No. 101/2020, Rajasthan High Court (decided on 09.11.2020).

17. It is therefore, submitted that there is no ground for recall of the Bail Order dated 14.12.2020 and the present Petition is liable to be dismissed.

18. Submissions heard and record perused.

19. At the outset, it is pertinent to mention that it is the recall and not cancellation of Bail order, which has been sought by the Petitioner/DRI. The **first grievance** of Petitioner was that the investigation was at crucial stage of investigations and the Complaint had not yet been filed.

20. However, it has been rightly submitted by the Respondent-Khushant Nagpal that the Charge Sheet has been filed in the year 2021 and the Complaint is at the stage of Pre-Charge Evidence, which means the trial is yet to commence. This ground has become infructuous as the Investigations have got completed.

21. The **second ground** agitated by the Petitioner/DRI is that 66.40 kg. of Gold, which is a prohibited item was being smuggled in two Trucks and the Respondent-Khushant Nagpal was one of the occupant/helper cum driver (*Khalasi*) in one of the Truck. The gravity of the offence has not been considered and thus, the bail has been wrongly granted to the Respondent-Khushant Nagpal.

22. Much has been argued on the basis of the statement under Section 108



the Act recorded of the four other co-accused persons. As has emerged from the Statements under Section 108 the Act recorded of the co-accused as well as of the Respondent-Khushant Nagpal that he had been asked to be the *Helper cum Driver (Khalasi)* in one of the truck. Since he was a young boy of 20 years and was getting an opportunity of learning how to drive a Truck in addition to money, he agreed and accompanied the other co-accused in the Truck, from which 33.20 Kg. of Gold was recovered.

23. It has been explained by Respondent-Khushant Nagpal that he is young boy of 20 years who had been brought up by his Maternal Aunt Smt. Lucky Satija (Mausi) and her husband Mr. Ajay Kumar (Mausa). It was Smt. Lucky Satija who asked him to accompany the Truck, while Ajay Kumar subsequently joined the other co-accused to bring back the Trucks to Bareilly. Essentially, the intention of the Mausi, who is the main conspirator, was to keep an eye on the goods which were being smuggled in the Trucks. Respondent-Khushant Nagpal was in fact used as a tool by his own Mausi and Mausa and that he had no knowledge about the goods being smuggled in the Truck.

24. It is pertinent to consider that the Ld. Trial Court has rightly observed that Respondent-Khushant Nagpal was a young boy of 20 years, engaged as a Cleaner on the Truck, to which he agreed as he was in need of money. It was further observed that he was not the main mastermind of the alleged offence. Confining such youthful offender in Jail is neither psychologically nor mentally conducive for such young boy and there is likelihood of physical abuse if remanded to judicial custody, as he would get criminalised by being in the company of other criminally active persons. The role of the



Respondent-Khushant Nagpal was not that of a main conspirator.

25. Therefore, taking into consideration the gravity of the offence and the allegations against the Respondent-Khushant Nagpal along with his age, bail was granted.

26. Another factor which is relevant and material to be noted is that because the Complaint was not filed in the Court within the statutory period all four accused had been granted Statutory Bail. Moreover, the Complaint already stands filed.

27. No grounds were brought forth by the Petitioner/DRI to justify that the Order dated 14.12.2020 suffers from any apparent anomaly or that all relevant factors had not been duly considered while granting bail to the Respondent-Khushant Nagpal.

28. There is no merit in the present Petition, which is hereby dismissed.

29. The Petition is disposed of along with pending Application(s), if any.

(NEENA BANSAL KRISHNA)
JUDGE

MAY 15, 2025/RS