IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.76916 of 2025

Arising Out of PS. Case No.-9 Year-2025 Thana- D.R.I District- Patna

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Md. Salamuddin son of Late Md. Idrish R/O Mo Miyan Bagh Meena Bazar Sonepur, PS-Hariharnath District-Saran

... ... Petitioner/s

Versus

1. The State of Bihar
2. The Union of India through the Directorate of Revenue intelligence Regional Unit, Patna bihar

... ... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Alok Kumar Alok, Advocate
For the Opposite Party/s : Mr.Anil Kumar, APP
For the D.R.I. : Mr. Anshuman Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE RUDRA PRAKASH MISHRA

ORAL ORDER

4 03.02.2026 Heard learned counsel for the petitioner, learned APP for the State and learned counsel for D.R.I.

2. The petitioner seeks bail in connection with Economic (DRI) P.S. case No. 13(O)/25, arising out of D.R.I. Unit Case No. 9/2025-26 registered under Section 135(1)(b) of Customs Act, 1962 (for brevity, 'the Act')

3. As per the prosecution case, acting upon specific intelligence officers of the Directorate of Revenue Intelligence, Patna intercepted the accused on 26.06.2025 while he was

travelling in Train No. 15658 (Brahmaputra Mail) at Patna Railway Junction. Upon personal search, 12 gold bullions of foreign origin were recovered from concealed compartments of a trolley bag and the jeans pant worn by the accused. The seized gold weighed 1990.800 grams and was valued at ₹1,98,18,414/- (Rupees one crore ninety-eight lakh eighteen thousand four hundred fourteen only). The accused failed to produce any valid document in support of lawful possession and, in his statement recorded under Section 108 of the Act, admitted that the gold had been smuggled from Myanmar and was being transported to Delhi for delivery. Consequently, the gold was seized under Section 110 of the Act as being liable to confiscation, and the accused was arrested on 27.06.2025 for the offence punishable under Section 135(1)(b) of the Act.

4. Learned counsel for the petitioner submits that the petitioner is innocent and has been falsely implicated. It is contended that the entire prosecution story is fabricated and founded merely on suspicion, and that no recovery has been made from the conscious possession of the petitioner. According to the defence, the petitioner had gone to Platform No. 4 of Patna Junction on 26.06.2025 only to receive a friend arriving from Kolkata. Upon learning that the friend had missed the train,

the petitioner was about to return when he was apprehended by DRI officials without any lawful basis.

5. It is further submitted that the petitioner was forcibly taken to the DRI Office, Patna, where his signatures were obtained on blank papers, which were subsequently converted into a purported statement under Section 108 of the Act. The defence asserts that none of the seized articles belong to the petitioner except his mobile phone and Aadhaar card, and that he has never claimed ownership of the recovered gold bullions. The petitioner, it is contended, has been made a scapegoat without any fault on his part. Emphasis is laid on the fact that he is a permanent resident with deep-rooted ties to society, and there is no likelihood of his absconding or tampering with the evidence, particularly when the charge-sheet has already been filed.

6. A counter-affidavit has been filed on behalf of D.R.I.. Learned counsel for the D.R.I. places reliance on the counter-affidavit and submits that the plea of innocence and absence of criminal antecedents carries little weight in cases involving grave economic offences. Acting upon specific intelligence, officers of the DRI, Patna intercepted the petitioner from Train No. 15658 (Brahmaputra Mail) in the presence of independent

witnesses. The petitioner initially attempted to conceal his identity and thereafter admitted that he was carrying 12 gold bullions of foreign origin, weighing 1990.800 grams and valued at ₹1,98,18,414/- (Rupees one crore ninety-eight lakh eighteen thousand four hundred and fourteen only) without any valid supporting documents. The contraband was recovered from concealed compartments of his trolley bag and clothing and was seized under Section 110 of the Act.

7. It is further submitted by learned counsel for D.R.I. that the petitioner's statement recorded under Section 108 of the Act contains a clear admission regarding the smuggling of the gold from Myanmar for delivery in Delhi. The prosecution also relies upon the petitioner's travel details and mobile tower location, which prima facie corroborated the prosecution version. The allegations of coercion and false implication are stated to be wholly unfounded, particularly as no such grievance was raised before the Trial Court at the time of remand. Considering the gravity of the offence and the enormous value of the seized contraband, it is contended that there exists a substantial likelihood of the petitioner absconding, indulging in similar activities, or hampering the trial if released on bail. The learned Additional Sessions Judge-XXIII, Patna, after due

consideration, has already rejected the petitioner's bail application by order dated 11.09.2025. Accordingly, dismissal of the present bail petition is prayed for.

8. From perusal of the record and submission made on behalf of both the parties, it appears that the petitioner is accused of possessing of 12 gold bullions of foreign origin, weighing 1990.800 grams and valued at ₹1,98,18,414/- (Rupees one crore ninety-eight lakh eighteen thousand four hundred fourteen only), allegedly smuggled into India and clandestinely transported for delivery. The offence alleged is punishable under Section 135(1)(b) of the Act, which prescribes stringent punishment for dealing with goods liable to confiscation where the market value exceeds the prescribed statutory limit of Rupees one crore.

9. At this stage, it is apposite to advert to the statutory restriction on grant of bail contained in Section 104 and Section 135 of the Act, which reads as under:

Section 104

> *"104. Power to arrest. (1) If an officer of customs empowered in this behalf by general or special order of the Principal Commissioner of Customs or Commissioner of*

Customs has reason to believe that any person in India or within the Indian customs waters has committed an offence punishable under section 132 or section 133 or section 135 or section 135A or section 136, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every person arrested under sub-section (1) shall, without unnecessary delay, be taken to a magistrate.

(3) Where an officer of customs has arrested any person under sub-section (1), he shall, for the purpose of releasing such person on bail or otherwise, have the same powers and be subject to the same provisions as the officer-in-charge of a police-station has and is subject to under the Code of Criminal Procedure, 1898 (5 of 1898).

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence relating to

(a) prohibited goods; or

(b) evasion or attempted evasion of duty exceeding fifty lakh rupees; or

(c) fraudulently availing of or attempting to avail drawback or any exemption from duty provided under this Act, where the amount of drawback or exemption from duty exceeds fifty lakh rupees, or

(d) fraudulently obtaining an instrument for the purpose s of th is Act or the Foreign Trade (Development and Regulation) Act. 1992(22 of 1992), and such instrument is utilised under this Act, where duty relatable to such utilisation of instrument exceeds, fifty lakh rupees, shall be cognizable.

(5) Save as otherwise provided in sub-section (4), all other offences under the Act shall be non-cognizable.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973. (2 of 1974) an offence punishable under section 135 relating to-

(a) evasion or attempted evasion of duty exceeding fifty lakh rupees; or

(b) prohibited goods notified under section 11 which are also notified under sub-clause (c) of clause (i) of sub-section (1) of section 135 or

(c) import or export of any goods which have not been declared in accordance with the provisions of this Act and the market price of which exceeds one crore rupees; or

(d) fraudulently availing of or attempt to avail of drawback or any exemption from duty provided under this Act., if the amount of drawback or exemption from duty exceeds

fifty lakh rupees or

(e) fraudulently obtaining an instrument for the purposes of this Act or the Foreign Trade (Development and Regulation) Act, 1992(22 of 1922), and such instrument is utilised under this Act, where duly relatable to such utilisation of instrument exceeds fifty lakh rupees, shall be non-bailable.

(7) Save as otherwise provided in sub-section (6), all other offences under this Act shall be bailable.

Explanation.- For the purposes of this section, the expression "instrument" shall have the same meaning as assigned to it in Explanation 1 to section 28-AAA."

Section 135

"*135. Evasion of duty or prohibitions (1) Without prejudice to any action that may be taken under this Act, if any person—*

(a) is in relation to any goods in any way knowingly concerned in misdeclaration of value or in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any prohibition for the time being imposed under this Act or any other law for the time being in force with respect to such goods; or

(b) acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111 or Section 113, as the case may be; or

(c) attempts to export any goods which he knows or has reason to believe are liable to confiscation under Section 113; or

(d) fraudulently avails of or attempts to avail of drawback or any exemption from duty provided under this Act in connection with 1 [export of goods; or

(e) obtains an instrument from any authority by fraud, collusion, willful misstatement or suppression of facts and such instrument has been utilised by such person or any other person,

he shall be punishable,—

(i) in the case of an offence relating to,—

(A) any goods the market price of which exceeds one crore of rupees; or

(B) the evasion or attempted evasion of duty exceeding 3 [fifty lakh] of rupees; or

(C) such categories of prohibited goods as the Central Government may, by notification in the Official Gazette, specify; or

(D) fraudulently availing of or attempting to avail of drawback or any exemption from duty referred to in clause (d), if the amount of drawback or exemption from duty exceeds 3 [fifty lakh] 4 [of rupees; or] with imprisonment for a term which may extend to seven years and with fine: 5

(E) obtaining an instrument from any authority by fraud, collusion, willful misstatement or suppression of facts and such instrument has been utilised by any person, where the duty relatable to utilisation of the instrument exceeds fifty lakh rupees.

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for less than one year;

(ii) in any other case, with imprisonment for a term which may extend to three years, or with fine, or with both.

(2) If any person convicted of an offence under this section or under sub-section (1) of section 136 is again convicted of an offence under this section, then, he shall be punishable for the second and for every

subsequent offence with imprisonment for a term which may extend to seven years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court such imprisonment shall not be for less than 7 [one year].

(3) For the purposes of sub-sections (1) and (2), the following shall not be considered as special and adequate reasons for awarding a sentence of imprisonment for a term of less than 5 [one year], namely:—

(i) the fact that the accused has been convicted for the first time for an offence under this Act;

(ii) the fact that in any proceeding under this Act, other than a prosecution, the accused has been ordered to pay a penalty or the goods which are the subject matter of such proceedings have been ordered to be confiscated or any other action has been taken against him for the same act which constitutes the offence;

(iii) the fact that the accused was not the principal offender and was acting merely as

a carrier of goods or otherwise was a secondary party to the commission of the offence;

(iv) the age of the accused.

Explanation.—For the purposes of this section, the expression "instrument" shall have the same meaning as assigned to it in the Explanation 1 to section 28AAA."

A plain reading of the above provision that is section 104(6)(c) of Customs Act **"Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence punishable under section 135 shall be non-bailable,— (c) where the market price of the goods involved exceeds one crore rupees"** , leaves no manner of doubt that where the value of the goods involved exceeds ₹1 crore, the offence under Section 135 is rendered non-bailable by legislative mandate. In the present case, the value of the seized gold is admittedly ₹1,98,18,414/-, which is far in excess of the statutory threshold. The offence, therefore, squarely falls within the ambit of Section 104(6)(c), warranting a heightened degree of caution while considering the prayer for bail.

10. Section 135 of the Act criminalises not only the act of smuggling but also the conscious possession, concealment,

transportation or dealing with goods which the accused knows or has reason to believe are liable to confiscation. The recovery of gold of foreign origin, the manner of its concealment in a trolley bag and clothing and the absence of any valid document in support of lawful possession, prima facie attracts the ingredients of Section 135(1)(b) of the Act.

11. The prosecution has placed reliance on the statement of the petitioner recorded under Section 108 of the Act, wherein he is stated to have admitted that the gold was smuggled from Myanmar and was being transported to Delhi. The legal position regarding the admissibility of such statements is well settled. In ***Naresh J. Sukhawani v. Union of India*** 1995 Supp (4) SCC 663, the Hon'ble Supreme Court held that a statement recorded under Section 108 of the Act is admissible in evidence and can form the basis of conviction, provided it is voluntary. The Court clarified that officers of the Customs Department are not police officers within the meaning of Section 25 of the Indian Evidence Act.

12. The said principle has been reiterated by the Division Bench of the Patna High Court in ***Commissioner of Customs v. Ghanshyam Prasad Gupta (2010) SCC OnLine Pat***

126, wherein it was held that statements recorded under Section 108 stand on a distinct footing and carry evidentiary value unless shown, at the threshold, to be involuntary. In the present case, the petitioner did not raise any contemporaneous grievance of coercion at the time of remand, rendering the allegation of forced confession, prima facie, an afterthought.

13. It is well settled that at the stage of consideration of bail, this Court is not expected to undertake a meticulous appreciation of evidence or adjudicate disputed questions of fact. The defence pleas relating to false implication and absence of conscious possession are matters to be tested at trial.

14. Having regard to the statutory embargo under Section 104(6)(c) of the Act, the gravity of the offence, the substantial value of the seized contraband, and the prima facie material on record, including the statement recorded under Section 108 of the Act, this Court is of the considered view that the petitioner has failed to make out a case for grant of bail. Offences involving large-scale smuggling of high-value goods have ramifications beyond the individual accused, as such acts adversely impact the country's economic framework and cause serious loss to public revenue. Keeping in view the legislative

intent to curb such economic offences and the larger public interest involved, this Court finds no justification to exercise discretion in favour of the petitioner at this stage.

15. Accordingly, the bail application is rejected.

(Rudra Prakash Mishra, J)

Pankaj/-
Alok Verma/-
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