

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Bail Cancellation Application No. 150/2023

Union Of India, Through Directorate Of Revenue Intelligence,
Jaipur.

----Petitioner

Versus

Suraj Jalinder Suryavanshi S/o Shri Jalinder Suryavanshi, R/o 6-A, Santosh Sagar Colony, Brahmpuri, Jaipur,

----Respondent

Connected With

S.B. Criminal Bail Cancellation Application No. 151/2023

Union Of India, Through Directorate Of Revenue Intelligence,
Jaipur.

----Petitioner

Versus

Anil Narayan Magar S/o Shri Narayan Magar, R/o Village Taraswadi, District Sangli, Maharashtra,

----Respondent

S.B. Criminal Bail Cancellation Application No. 156/2023

Union Of India, Through Directorate Of Revenue Intelligence,
Jaipur.

----Petitioner

Versus

Shridhar Devdas Suryavanshi S/o Shri Devdas Suryavanshi, R/o House Number 20, Mangodi Bagichi, Lakshi Nagar, Brahmpuri, Jaipur.

----Respondent

For Petitioner(s) : Mr. Kinshuk Jain, Senior Standing Advocate for DRI assisted by
Mr. Jai Upadhyay, Adv.
Mr. Saurabh Jain, Adv.
Mr. Himanshu Agarwal, Adv.
Mr. Banwari Lal Thakar, Adv.

For Respondent(s) : Mr. Anil Goyal, Adv.

HON'BLE MR. JUSTICE PRAVEER BHATNAGAR

Reserved on :: **02/12/2024**

Pronounced on :: **20/12/2024**

1. Union of India through Director of Revenue Intelligence, Jaipur has preferred this bail cancellation application under Section 439(2) of Cr.P.C. against the order dated 17.10.2023 passed by the Additional Sessions Judge No.9, Jaipur Metropolitan-II, whereby the accused-respondents were granted bail under Section 135(1)(a)(b) of Customs Act. It is contended that the Court below misconstrued the circular No.13/2022 dated 16.08.2022 and enlarged the respondents on bail. Considering the matter falling in clause 2.3(b)(c) of circular. In contrast the case falls under Clause-b which reads as follows:-

"Cases of outright smuggling of high value goods such as precious metal, restricted items or prohibited items or goods notified under Section 123 of the Customs Act, 1962 or offence involving foreign currency where the value of offending goods is Rs.50,00,000/-(Rupees Fifty Lakh) or more."

2. Clause-2.3 of the circular states that arrest in respect of an offence, should be effected only in exceptional situations which may include cases of outright smuggling of high value goods.

3. It is argued that the said gold recovered from the possession of respondent-Anil Narayan Magar was having market value of Rs.1,31,10,350/-, therefore, Clause 2.3(c) of the aforesaid circular was not applicable. It is also contended that respondent-Anil Narayan Magar did not furnish any legible documents showing his legal possession over the gold recovered. The said gold recovered from respondent-Anil Narayan Magar comes within the purview of

outright smuggling and falls under the goods notified under Section 123 of the Customs Act.

4. Clause-c of the said circular is applicable only for the importation of trade goods involving wilful mis-declaration in description of goods covered under Section 123 of the Customs Act, where the market value of the offending goods is Rs.2,00,00,000/- or more.

5. The respondents were rightly arrested by the Customs Authority as per the Clause contained under 2.3 (b) of the circular No.13/2022 dated 16.08.2022. It is also contended that the Court below granted the bail to the respondents considering that they have retracted from their statements under Section 108 of the Customs Act. In contrast, no such retraction was on record, on the date of the impugned order. Likewise, the factual aspects narrated in Para-16 of the application were ignored, which expressly states that respondents-Anil Narayan Magar, Suraj Jalinder Suryavanshi and Shridhar Devdas Suryavanshi were complicit in smuggling the gold worth more than Rs.1,00,30,000/-. It is fervently argued that gold worth Rs.1,31,10,350/- was seized from the possession of respondent-Anil Narayan Magar. It is also argued that after recording the statement of respondent-Anil Narayan Magar, it was revealed that he was going to supply the said gold to Suraj Jalinder Suryavanshi. On the same day, respondent-Suraj Jalinder Suryavanshi was found at the exact place disclosed by the respondent-Anil Narayan Magar.

6. The record also shows that several call details were transpired between Anil Narayan Magar and Suraj Jalinder Suryavanshi. Thus, their complicity in the smuggling golds is

evident. It is vociferously argued that unretracted statements recorded before the Competent Authority under Section 108 of the Customs Act, cannot be brushed aside as the statements corroborated each other apparently pointing out specific roles of the respondents-Anil Narayan Magar and Suraj Jalinder Suryavanshi. It is also contended that respondent-Suraj Jalinder Suryavanshi in his statement under Section 108 of the Customs Act states that the gold was going to be handed over to respondent-Shridhar Devdas Suryavanshi at M/s Yashvardhan Gold Testing Shop. It is also contended that summons was issued to Shridhar Devdas Suryavanshi and in his voluntary statement under Section 108 of the Customs Act, he admitted that he has been purchasing the gold from Suraj Jalinder Suryavanshi without any bill.

7. Therefore, on the above facts, the Court below erred in granting bail to the respondents and the bail application of the respondents may be cancelled and they may be directed to surrender before the concerned Court to face the trial.

8. It is contended by learned counsel for the respondents that the Court below has rightly enlarged the respondents on bail vide impugned order dated 17.10.2023. It is also vociferously contended that after grant of the bail, the Union of India has yet not filed any complaint against the respondents for prosecuting them under Section 135(a)(b) of the Customs Act. The respondents have not breached the conditions of bail, they are regularly appearing. It is also contended that from the possession of Suraj Jalinder Suryavanshi and Shridhar Devdas Suryavanshi, no gold articles were recovered, mere presence of Suraj Jalinder

Suryavanshi at the place indicated by the other co-accused, cannot be considered an offence under Section 135(1)(a)(b) of the Customs Act. The trial has yet not commenced. It is also contended that at this stage, it cannot be said that the gold allegedly found in the possession of Anil Narayan Magar was smuggled outside from India. It is also contended that prosecution *prima-facia* failed to establish that the alleged gold was smuggled outside the Country to any part of India. Keeping gold without any bill or invoice, *ifso facto*, is not a reason to believe that gold was smuggled out of India to any part of the Nation. The other co-accused has already been enlarged on default bail and after passing of the bail order Union of India has failed to file the complaint, further, there is no chance that the respondents will influence the evidence as all the witnesses are departmental witnesses. Likewise, the maximum punishment provided for offence is 7 years. No fruitful purpose shall be served to send the respondents to Jail. Therefore, the application for cancelling the bail of the respondents may be dismissed.

9. Heard and perused the material available on the record.

10. This fact is not denied that complaint has yet not been filed against the respondents for prosecuting them under Section 135(2)(a)(b) of the Customs Act.

11. It is not desirable to express anything on the merits of the case. The respondents have not breached any conditions incorporated in the bail order, the maximum punishment awarded under the Customs Act 7 years. Therefore, considering the above aspects, this Court is not inclined to entertain the application filed by the Union of India.

12. Accordingly, these instant bail cancellation applications are hereby dismissed.

(PRAVEER BHATNAGAR),J

Ashwani Kr Srivastava/-1-3-S