

Nathulal Vs. State

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Court : Rajasthan

Decided On : Jul-08-1992

Reported in : 1992WLN(UC)118

Judge : N.L. Tibrewal, J.

Appeal No. : S.B. Cr. Misc. Bail Application No. 2320 of 1992

Appellant : Nathulal

Respondent : State

Judgement :

N.L. Tibrewal, J.

1. Heard learned Counsel for the parties.

The petitioner had been arrested on June 4, 1992, for an offence under Section 135 of Customs Act, 1962. As per the prosecution case, one Kude Khan, resident of Jaisalmer, had handed over 314 Kg. silver to Mohd. Khan, Akbar Khan and Kamal Khan. The Custom Department, received secret information that these persons were sitting in Kalyan Hotel, Jaipur. On this information, the Custom Officers, went there and recorded the statements of these witnesses under Section 108 of the Customs Act. According to their statements recorded by the Custom Authorities, they had received silver to be handed over to the petitioner

and that the same was delivered to him at Dudu. It was stated by them that for receiving amount they came to Jaipur and the petitioner paid Rs. 8 lac which were sent to Jaisalmer with Alam Khan.

2. As per the prosecution case, the search of the house of the petitioner was made but no incriminating article was found. However, on the search of shop of one Mahesh, the Custom Officers, had seized 16.070 kg. silver and some currency notes.

3. The contention of the learned Counsel for the petitioner is that the maximum sentence provided in such an offence where the goods are not seized, is 3 years. He further submits that the statements recorded under Section 108 of the Act, have no relevancy to prove the guilt against the petitioner in view of the provisions contained under Section 138B of the Act. He further submits that there is no material on record that the petitioner was involved in the smuggling activities and even the alleged smuggled articles have not been recovered to connect the accused petitioner with the crime.

4. On the other hand, Mr. Gurjar, submits that the smuggling of silver in huge quantity is a serious offence and he should not be released on bail. He also submits that the statements recorded under Section 108 of the Act, are admissible and can be considered against the accused petitioner. He further submits that the petitioner was also involved previously in such nefarious activities as disclosed by the co-accused whose statements were recorded by the department under Section 108 of the Customs Act.

5. Without expressing any opinion on the merits of the case and taking into consideration the entire facts and circumstances of the case and also taking into consideration the fact that there is no material on the file of the department that the petitioner was involved in such offence previously also and the fact that he is now in judicial custody and the smuggled silver had not been recovered from his possession, I am of the view that he should be released on bail.

6. It is, therefore, ordered that the accused petitioner Nathulal Soni S/o Shii Govind Narain Soni, shall be released on bail, provided he furnishes a personal

bond in the sum of Rs. 50,000/- together with two sureties in the sum of Rs. 25,000/- each to the satisfaction of the learned trial-court, for his appearance or all subsequent dates of hearing and as and when called upon to do so subject to the condition that the petitioner shall not repeat such offence in future. If he is found involved in similar offence in future, the department shall be free to move an application for cancellation of his bail before the trial-court and the trial-court shall decide the application moved by the department on merits without reference to this Court.

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