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

+ CRL.M.C. 1661/2021

RUHULLA AMIN

..... Petitioner

Represented by: Ms. Sangita Bhayana, Adv.

versus

SH AMIT KUMAR AIR CUSTOMS OFFICER ..... Respondent

Represented by: Mr. Satish Kumar, SGSC for  
Customs.

**CORAM:**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

**ORDER**

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**06.09.2021**

The hearing has been conducted through Physical Mode.

1. By this petition the petitioner challenges the order dated 1<sup>st</sup> February, 2021 passed by the learned CMM where though the petitioner was granted permission to go to Afghanistan but subject to certain conditions which order was challenged by the petitioner before the learned Sessions Judge, Patiala House Court and the said revision petition was dismissed on 25<sup>th</sup> June, 2021.

2. The petitioner was intercepted while going to Afghanistan carrying certain medicines illegally and thus the petitioner was intercepted at the airport and proceedings initiated against him. After the adjudication an order was passed by the Additional Commissioner of Customs, IGI Airport, Terminal-3 as per which the value of the seized goods were re-determined as per Customs Valuation Rules at a discounted price which is less 20% of the MRP and was calculated at ₹ 90,50,174/- and thus the medicines worth

₹90,50,174/- on the re-determined value were confiscated and a redemption fine of ₹9 lakhs was imposed besides penalty of ₹13 lakhs on the petitioner under Section 114 of the Customs Act. The petitioner has not paid the said penalty and wants to go to Afghanistan. The plea taken by the petitioner is that the petitioner has 11 children, his first wife has been killed by the terrorist and he has to look after his family.

3. Learned CMM vide the order dated 1<sup>st</sup> February, 2021 permitted the petitioner to travel to Afghanistan with a direction to release his passport, inter alia, subject to the condition that he will deposit ₹13 lakhs as redemption fine and ₹9 lakhs as personal penalty as imposed by the Department, that he will furnish his address abroad and of his counsel who would receive notice on his behalf during this period of stay in Afghanistan. The petitioner challenged the said order before the learned Sessions Judge, Patiala House Court which dismissed in the Criminal Revision No. 196/2021 vide the impugned order dated 25<sup>th</sup> June, 2021.

4. According to learned counsel for the petitioner, the petitioner is not in a position to submit the redemption fine of ₹9 lakhs and ₹13 lakhs as personal penalty and that the petitioner be permitted to deposit 20% of the said amount and permit the petitioner to go to Afghanistan. Learned counsel for the petitioner states that the petitioner is not inclined to take the goods back, hence the redemption fine is not required to be deposited and only penalty is required to be deposited. Though there is an error in the noting of the learned CMM with regard to the redemption amount and penalty amount, however as noted in the order of the Additional Commissioner of Customs, IGI Airport, the petitioner is required to deposit the penalty amount of ₹13 lakhs and redemption fine of ₹9 lakhs.

5. On a query raised by this Court as to whether the petitioner has filed an appeal against the order of the Additional Commissioner of Customs, IGI Airport dated 20<sup>th</sup> January, 2021, learned counsel for the petitioner fairly states that no appeal has been filed. In case no appeal has been filed challenging the order of the learned Additional Commissioner of Customs, the order has attained finality and the petitioner who was found carrying medicines illegally is required to pay the penalty of ₹13 lakhs which is a penalty in personam.

6. In view of this fact and particularly the fact that there is very bleak chance of the petitioner being able to come back to India, in view of the prevailing circumstances in Afghanistan, this Court finds no ground to release the passport of the petitioner and permit the petitioner to leave the country without depositing the penalty of ₹13 lakhs.

7. Learned counsel for the petitioner relies upon the decision of this Court in CRL.M.C. 3679/2006 titled as 'Shri Mohinder Vs. Shri Pranav Shekher' wherein the petitioner therein was prosecuted under Section 132 and 135(1)(a) of the Custom Act who sought release of the passport as he had to travel abroad. This Court noted that in case the amount is not paid the respondent can recover the amount in accordance with the procedure contained in Section 142 of the Custom Act and permitted the release of the passport of the petitioner. In the said case the petitioner therein was an Indian national and recovery could be thus affected in terms of Section 142 of the Customs Act, however the petitioner herein is admittedly an Afghanistani national, has no property in India and hence no recovery can be made under Section 142 of the Customs Act.

8. Learned counsel for the petitioner also relies upon the decision of this

Court in CRL.REV. P. 137/2020 titled as 'Chen Hsui Yun Vs. DRI' wherein the petitioner was permitted to travel to his country Taiwan for a period of six months on her depositing a sum of ₹15 lakhs in the form of FDR with the Registrar General of this Court besides imposing other conditions. In the said case the petitioner was found in possession of foreign currency equivalent to ₹65 lakhs from her hand baggage and the adjudication proceedings were still pending. This Court also considered the fact that the petitioner therein was aged, suffering from various ailments and was required to undergo medical check-up for which she was required to go to her country. The respondent in the said case had stated that they had no objection if the petitioner therein was permitted to travel abroad subject to her deposition of 50% of the amount, which was around ₹32,30,000/- and in such condition this Court directed the petitioner therein to travel aboard to Taiwan on her depositing FDR in the sum of ₹15 lakhs with the Registrar General.

9. Considering that the adjudication proceedings qua the petitioner have attained finality and the petitioner even does not wish to redeem the articles, is required to deposit the penalty amount, hence this Court finds no error in the impugned judgment.

10. Petition is dismissed.

11. Order be uploaded on the website of this Court.

**MUKTA GUPTA, J.**

**SEPTEMBER 06, 2021**

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