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

Date of decision: 10th December, 2024

\+ **W.P.(C) 16113/2024**

FARIDA ALIYEVA .....Petitioner

Through: Mr. Pramod Kant Saxena, Adv. (M-9810015178)

versus

COMMISSIONER OF CUSTOMS .....Respondent

Through: Appearance not given.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE AMIT SHARMA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. The present petition has been filed under Article 226 of the Constitution of India for quashing of the seizure proceedings and detention receipt bearing no 38189 dated 4th November, 2024.

3. The Petitioner is an Azerbaijan national who travelled from Baku to Delhi on 4th November, 2024 as a tourist by Indigo flight No. 6E1804. It is stated by the Petitioner that she only speaks Azerbaijani language. As per the Petitioner, she was wearing 18 carat gold jewellery consisting of a necklace and a bracelet weighing 0.178 gms which was seized by the Customs officials in the arrival hall of T-3 of the Indira Gandhi International Airport, New Delhi.

4. According to her, she was made to remove the 18-carat gold jewellery worn by her and such jewellery was her personal gold jewellery. It is the case of the Petitioner that such personal jewellery would not qualify for seizure

under Rule 3 of the Baggage Rules, 2016 framed under Section 79 of the Customs Act, 1962. It is, therefore, prayed by the Petitioner that the goods be released and the detention receipt dated 4th November, 2024 bearing no. 38189 be quashed.

5. Ld. Counsel for the Petitioner relies upon the decision of the Coordinate Bench of this Court in ***W.P.(C) 6855/2023*** titled "***Nathan Narayansamy v. Commissioner of Customs***" decided on 15th September, 2023 to argue that such personal effects and personal jewellery would not be prohibited goods under the Customs Act, 1962.

6. On behalf of the Respondent-Department, it is submitted that the goods are lying with the Customs warehouse and if the Petitioner appears, the same appraisal would be carried out and once the value is determined, then the same can be released subject to whatever orders are passed by the Department.

7. The Court has perused the matter including the detention receipt dated 4th November, 2024. The same describes the goods clearly as gold jewellery gross weight 0.178 gms. The case of the Petitioner is that it consists of one necklace and one bracelet which she was wearing at the time when she travelled to India. Immediately, after the detention, she has retracted her statements which were signed on 8th November, 2024 and has also made a request that the jewellery be not melted.

8. A perusal of the decision cited by the ld. Counsel for the Petitioner *i.e.*, ***Nathan Narayansamy (supra)*** would show that in a similar case, this Court has held that personal effects would be exempt especially if they are in the form of ornaments in case of a foreigner. Rule 5 of Baggage Rules, 2016 would not apply in terms of Proviso to Rule 3 of the said Rules. The operative portion of the said order reads as under:

"2. The petitioner who holds a Malaysian passport issued on 02 May 2021 is stated to have arrived at the IGI Airport, New Delhi on 08 December 2022 from a flight which originated in Singapore. He is stated to have been detained for questioning after he had crossed the Green Channel and was moving towards the exit gate. His personal baggage items were thereafter searched. According to the respondent, on a personal search of the petitioner, they recovered a yellow metallic chain and a yellow metallic kada collectively weighing 463 grams. The aforesaid jewellery items were thereafter appraised and valued at Rs.21,45,079/-. The respondent asserts that the aforesaid goods are liable to be confiscated.

*3. We find that the issue would have to be considered and answered in light of the Baggage Rules 2016 [„**Baggage Rules**"]. Those Rules which were framed in terms of Section 79 of the Customs Act, 1962 make the following provisions for arriving passengers:-*

> *"3.* ***Passenger arriving from countries other than Nepal, Bhutan or Myanmar:***-*An Indian resident or a foreigner residing in India or a tourist of Indian origin, not being an infant arriving from any country other than Nepal, Bhutan or Myanmar, shall be allowed clearance free of duty articles in his bona fide baggage, that is to say, -*
>
> (a) *used personal effects and travel souvenirs; and*
>
> (b) *articles other than those mentioned in Annexure-I, up to the value of fifty thousand rupees if these are carried on the person or in the accompanied baggage of the passenger:*
>
> *Provided that a tourist of foreign origin, not being an infant, shall be allowed clearance free of duty articles in his bona fide baggage, that is to say,*
>
> *(a) used personal effects and travel souvenirs; and*
>
> *(b) articles other than those mentioned in Annexure- I, up to the value of fifteen thousand rupees if these are carried on the person or in the accompanied baggage of the passenger:*
>
> *Provided further that where the passenger is an infant, only used personal effects shall be allowed duty free.*

Explanation.- The free allowance of a passenger under this rule shall not be allowed to pool with the free allowance of any other passenger.

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***5. Jewellery**.- A passenger residing abroad for more than one year, on return to India, shall be allowed clearance free of duty in his bona fide baggage of jewellery up to a weight, of twenty grams with a value cap of fifty thousand rupees if brought by a gentleman passenger, or forty grams with a value cap of one lakh rupees if brought by a lady passenger.*

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ANNEXURE–I

(See Rules 3, 4 and 6)

1. *Fire arms.*
2. *Cartridges of fire arms exceeding 50.*
3. *Cigarettes exceeding 100 sticks or cigars exceeding 25 or tobacco exceeding 125 gms.*
4. *Alcoholic liquor or wines in excess of two litres.*
5. ***Gold or silver in any form other than ornaments**.*
6. *Flat Panel (Liquid Crystal Display/Light-Emitting Diode/ Plasma) television."*

4. *Undisputedly, and since the petitioner held a foreign passport, it would be the Proviso to Rule 3 alone which would apply. In terms of the said Proviso, a tourist of foreign origin is permitted clearance of duty free articles in his bona fide baggage, and the articles and the limits/restrictions of those articles which are not allowed duty free are mentioned in Annexure-I. As we read Entry 5 in Annexure-I, it speaks of gold or silver in any form other than ornaments. **The chain and the kada which were found on the person of the petitioner would undoubtedly fall in the category of jewellery and ornaments. Clause 5 of Annexure-I would therefore not sustain the seizure of the articles in question**.*

5. *While learned counsel for the respondent had also drawn our attention to Rule 5 of the Baggage Rules, we note that the same pertains to a passenger who is returning to India after having resided abroad for more than one year. That would clearly not apply to the petitioner here who is undisputedly a foreign national.*

Rule 5 in any case appears to be relating to an "eligible passenger" and which pertain to an Indian national upon his return to the country after having lived abroad for the period prescribed.

6. In view of the aforesaid, the writ petition is allowed. We proceed to quash the seizure proceedings as emanating from the notice dated 08 December 2022. The respondent is directed to return the seized articles to the petitioner forthwith."

9. In the opinion of this Court, the present case would clearly be covered by the said judgment inasmuch as it is not controverted that the goods which have been detained are a necklace and bracelet weighing 0.178 gms.

10. Under such circumstances, considering that this is 18 carat gold jewellery which was being worn by the tourist who was travelling from Azerbaijan to India, the same would not be liable to be seized and the detention receipt is accordingly quashed.

11. Accordingly, let the personal gold jewellery be released to the Petitioner within a period of one week.

12. The Petitioner shall personally visit the Customs warehouse for release of the said goods. It is made clear that Petitioner shall not indulge in sale of the said articles and shall carry back the same with her to the country of origin.

13. Petition is disposed of in these terms. All pending application(s), if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

AMIT SHARMA
JUDGE

DECEMBER 10, 2024/*Rahul/bh*