



\$~26

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 13th November, 2025
+ **W.P.(C) 2685/2021 & CM APPL. 71020/2025**
MYRATGELDI MAMMEDOVPetitioner
Through: Mr. Pramod Saxena, Adv.
versus
UNION OF INDIA & ANR.Respondent
Through: Mr. Gibran Naushad, SSC with Mr.
Harsh Singhal & Mr. Suraj Shekhar
Singh, Advs.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

CM APPL. 71020/2025 (for delay)

2. This is an application for condonation of delay in filing additional affidavit. For the reasons stated in the application, the delay is condoned. Application is disposed of.

W.P.(C) 2685/2021

3. The present petition has been filed, *inter alia*, seeking release of a gold chain of the Petitioner, weighing 516 grams, detained by the Customs Department, which according to the Petitioner is his personal effect.

4. The brief facts of the case are that the Petitioner is a citizen of Turkmenistan and was travelling from Istanbul to Delhi on 04th May, 2018. Upon arrival at the IGI Airport, New Delhi, the Petitioner was intercepted by the Customs Department and the following items were detained from the Petitioner:



- i. One gold chain, weighing 516 grams;
 - ii. USD 520/- and;
 - iii. INR 3460/-.
5. The Petitioner, after being detained at the airport upon his arrival, is stated to have been provided an interpreter, namely Mr. Sandeep Kumar Yadav from the Jawaharlal Nehru University, as he was speaking Russian.
6. The case of the Petitioner is that, he was questioned at the airport from 04th May, 2018, till 06th May, 2028 *i.e.*, for three days and he was, thereafter, arrested and was sent to judicial custody for a period of one month.
7. During the said period, the Turkmenistan Embassy appointed an official, *i.e.*, the First Secretary for attending the proceedings before the Adjudicating Authority. No Show Cause Notice (hereinafter, 'SCN') was issued to the Petitioner on the ground that there was a waiver signed by the First Secretary, Embassy of Turkmenistan. However, a personal hearing was afforded on 30th May, 2018.
8. Thereafter, the Order-in-Original dated 30th May, 2018 was passed on the same day as the personal hearing. In terms of the said order, the gold was absolutely confiscated and penalty was imposed upon the Petitioner in the following terms:

“i) I deny the free allowance of Rs. 50,000/-, as admissible, for the various acts of commission & omission.

*ii) I order absolute confiscation of the above 01 Gold chain total weighing 516 grams valued at **Rs. 13,62,745/- (Rupees Thirteen Lakh Sixty Two Thousand Seven Hundred forty Five only)** and seized from possession of the PAX under Section 111(d), 111(i), 111(j), 111(l), 111(m), and 111 (o) of the Customs Act, 1962;*



iii) I also impose a penalty of Rs. 8,13,400/- on the PAX under Section 112 and 114A of the Customs Act, 1962 for the gold smuggled by the PAX during his current visit and during his last 02 visits as admitted by the PAX in his statement dated 04.05.2018.”

9. The Order-in-Original does not mention any fact relating to the arrest of the Petitioner. The currency which was seized from the Petitioner is stated to have been released as recorded in paragraph 5.1 of the Order-in-Original. As per the Petitioner's Counsel, the Petitioner was in custody all along and after the passing of the Order-in-Original, the Petitioner was made to deposit a penalty of Rs. 8,13,400/- in order to be released from the judicial custody. The Petitioner was, thereafter, given permission to travel abroad on 07th June, 2018.

10. None of these facts are captured in the counter affidavit filed by the Customs Department, which merely defended the Order-in-Original.

11. The Id. Counsels for the parties were heard on the last date of hearing i.e., 21st August, 2025. At the outset, the objection raised by Mr. Naushad, Id. SSC was that the Order-in-Original having been passed and having been accepted by the Petitioner, the present writ would not be maintainable. It was further submitted that the grounds relating to the arrest of the Petitioner have not been raised in the writ petition.

12. On the other hand, Id. Counsel for the Petitioner had pointed out that in terms of Section 104 of the Customs Act, 1962 (hereinafter “*the Act*”), the Petitioner could not have been taken into judicial custody as the value of the item seized was itself Rs. 13.62 lakhs at tariff value. Id. Counsel further submitted that in terms of Section 104 of the Act, as also the circular issued by the Central Board of Indirect Taxes and Customs dated 17th September,



2013 in case of smuggling, the Petitioner could not be arrested if the market value of the goods is below Rs. 50 lakhs.

13. Thus, the submission on behalf of the Petitioner was that the Petitioner was illegally detained in the airport for three days and also illegally arrested. Ld. Counsel for the Petitioner also submitted that these facts had not been brought out in the writ petition as the Petitioner does not speak English and there is difficulty in communication.

14. Mr. Naushad, Id. SSC objects on the ground that an interpreter was duly afforded to the Petitioner as recorded in the Order-in-Original. He further laid emphasis on the Order-in-Original that records that the gold item was not a chain but was, in fact, multiple gold rings which were intertwined and crudely given the shape of the gold chain. The statement of the Petitioner was also recorded under Section 108 of the Act, who admitted to have indulged in smuggling even in the past.

15. Accordingly, after hearing the parties, on 21st August, 2025 the Court had directed as under:

“15. Accordingly, let the Customs Department, firstly, produce the gold item which has been seized from the Petitioner, if not already disposed, of on the next date of hearing. If the same is disposed of, let the image of the same be produced before the Court.

16. In addition, an affidavit shall be filed by the Customs Department giving the details of the detention of the Petitioner in the airport as also the FIR registered against him due to which he was sent to judicial custody. The said affidavit shall also contain the bail order as also the order permitting the Petitioner to travel abroad. Latest status of the said criminal case registered against the Petitioner be also placed. The said affidavit shall be



filed within six weeks.”

16. Today an affidavit has been tendered by the Customs Authorities stating that a total of 15,560 grams gold having a market value of Rs.4.46 crores was found in the possession of the Petitioner and 22 other passengers who were all travelling together. There were a total of 23 passengers, including the Petitioner, who were intercepted by the Customs Department, after walking through the green channel near the exit gate of the customs arrival hall. It is stated that the said passengers were asked to remove all metallic items carrying on their body and upon passing them through the door frame metal detector the search was conducted and the above amount of gold was detained.

17. Considering the value of the gold seized, all of the said passengers were arrested and they were given bail on 18th May, 2018 by the concerned Chief Metropolitan Magistrate, Patiala House Courts, New Delhi. Thereafter, on 21st June, 2018, the Id. CMM waived the condition of furnishing security and directed release of passports.

18. On 21st August, 2025 the Court had also called for the seized gold item itself which has been produced today in a sealed box. The box was unsealed by the Customs Officials and the gold item was produced before the Court, which would clearly show that it is not a personal effect of the Petitioner. The chain is a thick and heavy chain consisting of rings linked to each other.

19. Under these circumstances, and also considering that the Order-in-Original passed way back in 30th May, 2018 has not been challenged, the prayer of the Petitioner for release of the gold chain cannot be acceded to.

20. At this stage, in these facts, the Court is also not inclined to allow any



challenge to the said Order-in-Original. The said order does not warrant any interference.

21. The gold item has been handed back to the Customs Authority who have re-sealed the same.

22. All rights and remedies available in law are left open.

23. The petition is disposed of in these terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

NOVEMBER 13, 2025
dj/msh