

# Air Customs vs Farhad Hussain Eidi Zada on 11 May, 2021

**Author: Rajnish Bhatnagar**

**Bench: Rajnish Bhatnagar**

(VIA VIDEO-CONFERENCING)

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.M.C. 926/2021 and CRL.M.As. 4646/2021 & 5158/2021

AIR CUSTOMS

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Through: Mr. Satish Aggarwala, SP  
Mr. Gagan Vaswani, Advoc  
with SI Laxman Chaudhary  
Greater Kailash.

versus

FARHAD HUSSAIN EIDI ZADA

.... Res  
Through: Ms. Sangita Bhayana, Adv

CORAM:  
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

% 11.05.2021

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure against the order dated 02.03.2021, whereby the permission was granted to the respondent to visit abroad for a period of one year, and order dated 04.03.201, whereby the respondent was allowed to deposit cash in lieu of FDR, passed by the Ld. CMM, New Delhi.

2. Briefly stated the facts of the case are that on the basis of intelligence, the respondent was allegedly intercepted on 01.02.2021 by the Air Custom Officers when he came from Kabul at the IGI Airport, T-3, New Delhi and gold valued at Rs. 82,44,540/- was allegedly recovered from his possession. It is the case of the petitioner that since the respondent appeared to have committed offences punishable under Sections 132 and 135 of the Customs Act, 1962, he was arrested on 02.02.2021 at 1730 hours. Ultimately the respondent was granted bail on 17.02.2021, subject to the conditions including not to leave India without prior permission of the Court.

3. On 02.03.2021, the respondent filed an application for release of his passport as well as permission to go abroad for a period of one year before the Court of Ld. CMM and the Ld.CMM vide

order dated 02.03.2021 granted permission to the respondent to visit abroad for a period of one year. Certain conditions were also imposed on the respondent and one of the condition was that the respondent shall furnish an FDR in the sum of Rs. 1,00,000/-. But on 04.03.2021, the respondent moved an application seeking permission to deposit cash instead of FDR and the said application was also allowed vide order dated 04.03.2021. Now these two order i.e. order dated 02.03.2021 and 04.03.2021 have been challenged by the petitioner in the present petition with the prayer to set aside the said orders.

4. It is submitted by the Ld. SPP for the petitioner that the respondent is a foreigner. He has no assets and interest in India. It is further submitted that Ld. CMM did not taken into consideration that the respondent in his statement tendered U/s 108 of Customs Act, 1962 had admitted that he had smuggled 1500 grams of gold valued Rs. 66,13,268/- on his previous visit. It is further submitted that the investigation is still pending and in case the respondent is granted permission to go abroad on any condition whatsoever, he is not likely to return to face investigation, adjudication proceedings and prosecution. It is further submitted that the medical certificates of the respondent are of no help to him and he should be interested in treatment for his alleged ailments and not in going abroad.

5. On the other hand, it is submitted by the Ld. counsel for the respondent that the respondent is a poor person, has his family to support in Afghanistan who is virtually on the verge of starvation and there is no one else to look after his family and he is the sole bread earner of his family. It is further submitted that the respondent is mentally disturbed and he came to India for his treatment. It is further submitted that the respondent requires continuous medical treatment and his prolonged stay in India without any work would completely ruin him and his family. It is further submitted that the departmental adjudication proceedings would take long time and the respondent has no source of livelihood in India so he cannot stay in India for an indefinite period. She prayed for dismissal of the present petition.

6. I have heard the Ld. SPP for the petitioner, Ld. counsel for the respondent and perused the material available on record.

7. Perusal of the record shows that the respondent is a native of Afghanistan and there is every possibility that he would abscond and fail to return to India in case he is permitted to go to his country at this stage and thus misuse his liberty. The investigation in the present case is still underway and charge sheet is yet to be filed. In case, the petitioner is allowed to leave the country, the same will hamper further investigation of this case and the filing of the charge sheet. Moreover, keeping in view the nature and gravity of the allegations, it is not a fit case where permission to go abroad should be granted. Consequently, the petition stands allowed. The impugned orders dated 02.03.2021 and 04.03.2021, passed by the Ld. CMM, New Delhi are set aside. All pending applications (if any) are also disposed of.

RAJNISH BHATNAGAR, J MAY 11, 2021 Sumant