

THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Bail Application No. 79 of 2025

[Muhammad Faheem v. The State]

Applicant : Muhammad Faheem son of Muhammad Noor through Mr. Waseem Shaikh, Advocate.

Respondent : The State, through Rana Sakhawat Ali, Advocate.

Mr. Muhammad Javed Khalid Raan, Deputy Attorney General for Pakistan.

Date of hearing : 09-04-2025

Date of decision : 09-04-2025

*Crime No. 01/2021
U/S: 2(37), 2(9), 2(14) (a) & (b), 6(1) & (2), 7(1), (2),
(i), (ii), 8(1)(a), (ca) & (d), 8A, 21, 22(1) (23(1), 25,
26(1) and 73 of the Sales Tax Act, 1990 punishable u/s
33(3), (5), (8) (11c) (13) (16), 468 PPC ibid
P.S. Assistant Commissioner-IR- zone-II
RTO-I, Karachi*

ORDER

Adnan Iqbal Chaudhry J. - The Applicant seeks post-arrest bail in the aforesaid crime after the same has been declined by the Special Judge (Customs, Taxation & Anti-Smuggling-II), Karachi by order dated 15.03.2025.

2. Heard learned counsel and perused the record.

3. The Applicant is registered for sales tax under the name and style 'N.K. Exports'. On 12.01.2021, FIR was lodged against him by the Department for the offence of tax fraud as defined in section 2(37) of the Sales Tax Act, 1990 [Act]. It was alleged that he had claimed refund of sales tax paid as input tax based on fake invoices during the tax period of January 2012 and November 2012. Apparently, the FIR was lodged pursuant to a finding by the Federal Tax Ombudsman [FTO], dated 08.03.2019, that refund sanctioned to the Applicant *vide* Refund Payment Orders dated 10.07.2012 and 02.01.2013 [RPOs] was

fraudulent. Against the FIR, the Applicant first preferred Constitution Petition No. D-1323/2021, where an order of no-arrest was made while directing the Applicant to join proceedings before the trial court. However, since the Applicant was not regular before the trial court, the latter issued NBWs and he was arrested. The aforesaid petition was ultimately dismissed.

4. The facts of the case appear to be that the Applicant was sanctioned a sales tax refund of Rs. 21,048,262/- with RPOs issued by the Assistant Commissioner in 2012 and 2013. One of the cheques of Rs. 9.8 million was also credited to his bank account. In the meanwhile, the FBR suspected a tax fraud and issued a red alert dated 23.01.2013 to stop refund payments. However, strangely, no proceedings were initiated by the Department until an order was issued by the FTO on 08.03.2019. It was thereafter that Order-in-Original No. 04/2020 was passed by the Department on 28.12.2020 under section 11(3) of the Act, followed by the FIR on 12.01.2021. The delay of 7 years in initiating proceedings against the Applicant raises questions that have yet to be answered, one of them being, as contended by the learned counsel for the Applicant, that adjudication proceedings by the Department was time-barred of no legal consequence.

5. Be that as it may, the allegation against the Applicant is that he obtained a sales tax refund premised on input tax adjustments which were based on fake sales tax invoices. However, the Order-in-Original against the Applicant relied upon by the Department's counsel, does not discuss the facts leading to the finding of fake invoices. Even the name of the registered person who allegedly issued those invoices does not find mention. It appears that there is little or no investigation into the underlying supply chain, an aspect that is necessary to probe to establish tax fraud under the Act. In other words, the case against the Applicant is one of further inquiry into his guilt, and therefore falls within the ambit of sub-section (2) of section 497 Cr.P.C.

6. As per Order-in-Original No. 04/2020 passed against the Applicant, the quantum of tax fraud alleged to be committed by the him is Rs. 21,048,260/-. The imprisonment prescribed for such quantum under clauses 11(c) and 13 of section 33 of the Tax, does not exceed five years. Therefore, the offence alleged against the Applicant also does not fall within the prohibitory clause of section 497 Cr.P.C.

7. For the foregoing reasons, the Applicant Muhammad Faheem son of Muhammad Noor is granted post-arrest bail in the aforesaid FIR subject to furnishing solvent surety in the sum of Rs. 1,000,000/- [Rupees One Million only] alongwith P.R. Bond in like amount to the satisfaction of the trial Court.

Needless to state that the observations herein are tentative, and shall not be construed to prejudice the case of either side at trial.

JUDGE

Karachi

Dated: 09-04-2025

*PA/SADAM