

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Criminal Custom Bail Applications No.12 and 13 of 2015

PRESENT: MR. JUSTICE SALAHUDDIN PANHWAR

Applicants

Saeed Ahmed &

Muhammad Saqib : through M/s. Syed Mehmood Alam Rizvi, Zakir
Laghari, Javed Iqbal Burqi and Muhammad
Farooq, Advocates

The State : through Mr. Muhammad Qasim, Standing
Counsel

Date of hearing : 07th May 2015

Date of Order : 13.05.2015.

ORDER

SALAHUDDIN PANHWAR, J:- The present bail applications have been filed by accused Saeed Ahmed S/o. Mehmood Dawood and Muhammad Saqib S/o Muhammad Ahmed in crime No.8 of 2015 under Sections 156(1) (8)(14) & 32 of Customs Act, 1969 read with Section 5(2) PCA-II, 1947.

2. The facts, necessary for disposal of the present bail applications in brief, are that the complaint had received credible information regarding arrival of accused, known as "KHEPYA", alongwith contraband articles at Karachi from Dubai on 23.01.2015 at 2230 hours via Flight No.PK-208 for getting smuggled articles cleared with connivance of the duty officers of customs department. On such information raiding party took the position outside the passenger gate of Jinnah International Airport and on the pointation of the spy the passenger was stopped and was enquired about the baggage which he was carrying but he failed to give proper reply therefore, after introduction of the raiding party, the complainant took the luggage for search and secured the contraband articles for which the said passenger had paid very meager duty of 55 US Dollars as such was arrested. Such contraband articles were also seized. On the pointation of

the arrested accused, disclosed his name as Muhammad Saqib, some other contraband articles were secured from the flat of co-accused Saeed Ahmed. It is further stated that in the FIR that personal search of accused was also conducted and sufficient foreign currency was also secured from him, hence accused was arrested and challan has been sent against him in court.

3. Learned counsel for the accused vehemently contended that the accused Saeed Ahmed was called by the Investigation Officer through notice dated 19.01.2015 and on his appearance in FIA Centre, he was arrested and has been implicated in the present case. He further contended that no witness of the locality was picked-up at alleged time of raid at the flat of co-accused Saeed Ahmed which is legal flaw in the case of prosecution. According to him the accused Waqas had also paid proper duties of the articles which is lawfully brought by him from Dubai and because of the personal grudge and enmity, the I.O. has implicated him falsely as such the case for further enquiry has been made out and accused may be released on bail. In support of his contention he has relied upon the cases reported as *SIKANDAR A KARIM vs. THE STATE* [1995 SCMR 387], *Messrs, SHAHEEN CALICO PRINTING WORKS vs. MUMTAZ ALI KHAN AND 3 OTHERS* [PLD 1975 Lahore 1442], *Raja Muhammad Younus vs. The State* [2013 SCMR 669], *MUHAMMAD MANSHA vs. STATE* [1997 SCMR 617], *ALI AHMAD vs. MUHAMMAD YAQUB ALMANI* [PLD 1999 Karachi 134], *SAEED AHMED vs. STATE* [1996 SCMR 1132], *FEDERATION OF PAKISTAN vs. MASTER ENTERPRISES (PVT.) LTD.* [2003 PTD 1034] and *ASIF AYUB vs. State* [2010 SCMR 1735].

4. Mr. Muhammad Farooque, learned counsel for applicant/Muhammad Saqib, while adopting above arguments, contended that applicant is innocent, has been implicated with ulterior motive in this case, allegations require further probe.

5. Learned Standing Counsel pointed out that accused Muhammad Saqib was arrested red handed and recovery has made from him and co-accused Saeed Ahmed was also arrested from his flat on the pointation of co-accused; and there is sufficient recovery from his flat hence no case for bail is made out at this stage.

6. I have considered the arguments advanced on behalf of parties and have gone through the material available on record.

7. The perusal of the material shows that the accused Muhammad Saqib was arrested while passing from the passenger gate of Jinnah Terminal after getting clearance his luggage and there was recovery of number of articles but had simply paid duty of 55 US Dollars while getting clearance of these articles. Not only this but considerably huge currency notes of different countries were recovered from the possession of the applicant/ accused at such time. The applicant/accused has not denied possession and ownership thereof but has claimed to be possessing lawfully as it was cleared by Khalid Mehmood Tabasum I.P.S of Pakistan Customs after making considerably less duty. The position, being so, makes it quite clear and obvious that the applicant/accused knowingly attempted to bring into (Pakistan) the seized articles with an object defraud the Government of payable legal duty which act *prima facie* falls within meaning of Section 156 of the Act. The burden for such falls upon the accused even at bail stage. Reference can be made to the case of SIKANDAR A. KARIM vs. STATE [1995 SCMR 387. The operative part whereof is reproduced hereunder:-

“Before proceeding further, we may state here, that unlike an ordinary criminal case where burden of proof is always on the prosecution to prove its case against the accused person beyond reasonable doubt, section 156(2) of the Act provide that where goods specified in clause (s) of section 2 of the Act or in a notification issued thereunder, are seized under the Act in the reasonable belief that an act to defraud It is, therefore, quite clear that a persona accused of an offence under section 156(1)(8) of the Act has to discharge the initial burden of showing that the goods recovered from his possession were neither smuggled nor their possession was unlawful.....”

8. From above, it is quite clear and evident that the offences, falling within meaning of the Section 156(2) of the Act are not like the ordinary offence but is the offence which cause direct effect upon the government and indirect effect thereof is upon the society which is ultimate beneficiary of government revenue. Thus, this aspect is also to be kept in view. Not only this, but from perusal of the above, it is evident that burden is upon the applicant/accused to show that the articles, seized and recovered, were/are lawful which burden *tentatively* appears to be not discharged because applicant/accused cannot deny status of such articles to be lawful by joining hands with Khalid Mehmood Tabasum, the co-accused i.e to say giving gratification/bribe for getting illegal clearance. The circumstance *prima facie* rather shows that the applicant/accused with active knowledge invoked an official to exercise his authority in an illegal manner which act is also an offence. Let me add that the law has its own course and consequence which are not dependant upon the wish or wishes of two, even if one of these two is a person in authority. The applicant/accused *prima facie* appears to be linked with an offence falling within meaning of the Section 156 of the Act and since the applicant/accused has failed in bringing his case out of purview of Section 497(1) to Section 497(2) of the Cr.PC hence is not entitled for concession of the bail.

9. As regard the case of the co-accused Saeed Ahmed , it appears from the record that on pointation of the arrested accused, the raid was conducted at the house of the accused Saeed Ahmed and recovery of different articles was made. However, it is also a matter of record that such raid and recovery was made by the prosecution without associating any private person or seeking any permission for conducting raid/search of the house although it was obligatory upon the raiding party which *prima facie* had no exceptional circumstance of escape of the accused or removal of the articles. Only the exceptional circumstance could justify avoiding the mandatory compliance of Section 103 Cr.P.C. The applicant/ accused has not owned such recovery rather has come forward with plea that he was called at FIA office through notice and then was implicated in the instant

case. The articles, recovered, are alleged to be contraband but the exceptional circumstances justifying escaping mandatory requirement of Section 103 of the Code and that alleged place of recovery i.e flat was in exclusive possession and use of the applicant/accused are the aspects which require further probe.

10. In view of above discussion, the bail plea of the applicant/accused Muhammad Saqib is declined while that of applicant/accused Saeed Ahmed is accepted. The applicant/accused Saeed Ahmed is hereby ordered to be released on bail subject to his furnishing solvent surety in the sum of Rs. 300,000 (Rupees Three Hundred Thousand Only), and PR bond in the like amount to satisfaction of trial Court.

J U D G E

Karachi, dated: _____

Sajid