

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

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SPL. CR. BAIL APPLICATION NO.114/2015

Date Order with signature of Judge

For hearing of bail application.

12.01.2016

Mr. Attaullah Khattak advocate for applicant.
Mr. Ashiq Ali Anwar Rana, Spl. Prosecutor, Customs alongwith Mr.
Muhammad Javed K.K. Standing Counsel and Farhatullah Jafri, I/O.

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Through instant application, applicant seeks post arrest bail in crime No.26-Exp/DCI/DIV-IV/Shah Plastic/2015, under section 2(e), 16, 32(1), 32(A)(1), 131, 131(1) of the Custom Act, 1969, punishable under clauses 8(i), (14), (14A), (45), (74), (77) & (86) of section 156(1) of the Custom Act 1969, read with Serial No.8 of Schedule II of Export Policy Order 2013-2014, Section 3(1) read with section 3(3) of the Imports & Exports (Control) Act, 1950; registered at P.S. Customs.

At the outset it would be conducive to reproduce para 7, 13, 15 and 16 of the challan as under:-

“7. Subsequent to lodging of FIR, the indepth investigation was carried out to unearth the syndicate criminally involved in the smuggling/mis-declaration of poppy deeds under the garb of sea salt. Efforts were made to trace the accused persons nominated in the FIR. In this connection nominated person namely Asif Malik proprietor of M/s. Shah Plastic Industry was located and brought at the office of the Directorate General, Intelligence & Investigation – FBR, (Customs Enforcement), Regional Office, Karachi alongwith Syed Hassan Ali who is associate/partner of accused Asif Malik, relating to all the matters of factory and exports, on the equal share. As regard query relating to the seized consignment both the persons admitted that they had added the clearing agent namely M/s. Deejays Connection-II, CHAL # 2251 in the Weboc system, as their clearing agent, on the request of one of their friend,

Faisal Muhammad Saleem. Accused Asif Malik and Syed Hassan Ali were therefore arrested after completion of legal formalities and notice under section 171 of the Customs Act, 1969 was served upon them.”

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“13. In this connection statement of Faisal Muhammad Saleem through whom M/s. Deejays Connection-II has been added by M/s. Shah Plastic Industry, has also been recorded under section 161 CrPC who stated that Muhammad Hafeez had requested him to arrange an exporter to export sea salt. Faisal Muhammad Saleem contacted Asif Malik and Syed Hassan Ali doing business in the name and style of Shah Plastic Industry (Exporter), who added the name of M/s. Deejays Connection – II CHAL # 2251, and arranged E-Form valuing US\$6375/- on the commission of 8% of the value of E-Form.”

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“15. From the investigation it was further revealed that accused Asif Malik being proprietor of M/s. Shah Plastic Industry, Karachi in association with Syed Hassan Ali, is doing business since 2010. Accused Asif Malik for the purpose of export developed business relations with three persons namely Ahsan, Qayyum & Hassan to whom he allowed to utilize the NTN of his aforesaid company against payment of commission ranging between 6% to 8% of the value of each consignment shown in the E-Forms, meant for exportation. During January 2013 onward aforesaid three persons exported about two hundred consignments of various descriptions to foreign destinations in the name and style of M/s. Shah Plastic Industry, Karachi. It has been found that for the purpose of export of said consignments accused Asif Malik, completed all the formalities in the concerned banks. IN this regard, legality of the export of consignments by said three persons using the documents / NTN of M/s. Shah Plastic Industry, Karachi and their role is being ascertained.

16. In view of the investigation conducted so far it is established that the accused persons mentioned at Colum No.4 and 5 of the interim challan, have committed offence of mis-declaration, fiscal fraud and smuggling of restricted item Poppy Seeds in the garb of sea salt in violation of section 2(e), 16, 32(1), 32(A)(1), 131, 131, 131(1) of the Custom Act, 1969, punishable under clauses 8(i), (14), (14A), (45), (74), (77) & (86) of section 156(1) of the Custom Act 1969, read with Serial No.8 of Schedule II of Export Policy Order 2013-2014, Section 3(1) further read with section 3(3) of the Imports & Exports (Control) Act, 1950.”

From perusal of above, it appears that it is alleged that applicant being proprietor of M/s. Shah Plastic Industry has attempted to smuggle Poppy Seeds under cover of invoice of sea salt; offence falls within prohibitory clause; documents as placed on record show that applicant is proprietor of that company, already bail of applicant Muhammad Hafeez was dismissed by this Court through order dated 19.11.2015, para 5 being relevant is reproduced herewith for the sake of brevity:-

5. The record shows that the present applicant/accused filed GD declaring description, quantity value and H.S code of the goods as sea salt in PP bags 2,040 bags (25 kgs. Net/bag) weight 51,000 kgs.) however examination of the goods was conducted in presence of M/s. Muhammad Aslam Nadeem and Muhammad Abid found poppy seeds in 1,362 PP bags (25 net/bag) total weight 34,050 kgs. Wholesale market value @ Rs.240/kg total value Rs.8,172,000/-. Besides, during investigation conducted by the investigation officer it revealed that after examination of the goods in presence of two witnesses the case of mis-declaration, fiscal fraud and smuggling of restricted item poppy seeds in the garb of sea salt in violation of section 2(s) of the Customs At, 1969 whereas, no enmity so far is alleged against prosecution. The prosecution has collected sufficient material prima facie connecting the present applicant/accused as such no case for further enquiry has been made out.

Accordingly, applicant has failed to make out case within the purview of sub-section (2) of section 497 Cr.P.C. hence bail is dismissed.