

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

SPL. CR. BAIL APPLICATION NO.164/2015

Date Order with signature of Judge

For hearing of bail application.

28.01.2016

Mr. Mahang Assa Dashti advocate for applicant.
Mr. Ashiq Ali Anwar Rana, Special Prosecutor, Customs Authorities
alongwith Akrrar Ahmed, I/O.
Mr. Muhammad Javed K.K., Standing Counsel.

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Through instant application, applicant seeks post arrest bail in Crime No.P-819/2015-JIAP (Domestic Arrival), under section 156(1)(8) and (89) of the Customs Act 1969 registered at Model Collectorate of Customs, JIAP, Karachi.

2. Precisely, relevant facts are that on 30.11.2015 General Manger, Passenger Handling M/s. PIA had provided record of the passengers travelled on M/s. PIA Flight No.PK-194 as well as PK-502 alongwith the names and credentials of the flight crew. Scrutiny of the said reply has revealed that 21 passengers had travelled from Sharjah to Turbat on M/s. PIA Flight No.PK-194 and 33 passengers had travelled form Turbat to Karachi on M/s. PIA Flight No.PK-502 on 25.11.2015. it has further been revealed from the record that seat No.5A-E has been allotted to accused Fida Hussain; that one piece of luggage was checked-in which was in the name of accused Fida Husain weighting 20 kg. the said record also transpired that seat No.12C-F was assigned to the above referred passenger Wahid Baloch on the subject flight and one piece weighing 17 kg was also checked-in. Further investigation in this regard has revealed that M/s. PIA Turbat station had charged extra baggage tax (EBT) from the above referred Mr. Wahid Baloch being his luggage in excess weight. M/s.

PIA in their said reply had also submitted information regarding crew members of flight PK-502 which reveals that Mr. Shoaib Arshad Indhar and Mr. Manzoor Hussain Mirani (both are cabin crew) were detailed for the under reference flight. That in light of above information, the accused Fida Hussain had again been interrogated about the luggage which was booked in his name. The accused Fida Hussain has shown his total ignorance about any checked-in luggage in his name. He has also been probed about the checked-in baggage of said Mr. Wahid Baloch, however, the accused again replied in negative and also disclosed that they both have travelled without any luggage. In furtherance of the ongoing investigation, all the prosecution witnesses were summoned to appear before the investigating officer in office of Investigation and Prosecution Branch, Custom House, Karachi and their statements were recorded with regard to the subject seizure; the matter was taken up with the competent authority of M/s. Airport Security Force, Karachi, and requested to provide CCTV footages of the earlier mentioned events enabling the investigating officer to dig out the truth. Reply from the concerned quarters is still awaited and role of the PIA flight crew is also to be ascertained. However, in the light of investigation carried out so far, it is clearly established that 9 bottles of foreign origin liquor has been recovered from the trolley bag which was carried by accused Fida Husain at the time of his interception and whatever he had disclosed before the investigating officer is a premeditated story and thus have violated section 2(s), 16 and 178 of the Customs Act, 1969 punishable under clause 8 and 89 of section 156(I) *ibid*, whereas investigation pertaining to the recovery of 1264 mobile phones needs some more vital sectors to be probed in depth.

3. Further it is opined that during investigation it was established that he brought foreign original liquor recovered from the trolley bag which was carried out by the accused Fida Hussain at the time of inspection.

4. At the outset learned counsel for applicant inter alia contends that in fact such goods were owned by another passenger and that was not the property of the applicant; custom authority left the real owner and implicated the accused in this false case; offence does not fall within the prohibitory clause as it is settled principle of law that while deciding bail application lesser punishment is to be considered and in present case lesser punishment of the offence committed, is five years as provided under section 156(1)(8) of the Customs Act 1969.

5. In contra, learned Special Prosecutor while opposing the bail application, contends that since ample evidence is available against the applicant, therefore he is not entitled to bail.

6. After hearing the respective parties and meticulous examination of available record it is surfaced that prosecution has arraigned the applicant on the plea that he was having possession of nine bottles of intoxicant liquor while travelling from Turbat to Karachi and thus his case falls within the scope of smuggling and same is punishable upto 14 years. It is settled principle of law that while deciding bail application lesser punishment can be considered which, in this case is, 5 years. Admittedly applicant is behind the bar since two months and there is no likelihood of conclusion of trial in near future and quantum of sentence is yet to be determined by the trial Court, upon culmination of trial. Accordingly, while considering

lesser punishment applicant is admitted to post arrest bail subject to furnishing solvent surety in the sum of Rupees one lac and P.R. bond in the like amount to the satisfaction of the trial Court.

Imran/PA

J U D G E