

**ORDER SHEET**  
**THE HIGH COURT OF SINDH, KARACHI**

**Spl. Cr. B.A No.17 of 2022**  
**(Mukesh Kumar v. The State)**

**Spl. Cr. B.A No.18 of 2022**  
**(Yasir Abbas v. The State)**

Date	Order with signature of Judge(s)
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1. For order on office objections.
2. For hearing of bail application.

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Present:-

**MR. Justice Muhammad Iqbal Kalhoro J.**  
**Mr. Justice Agha Faisal, J.**

**25.04.2022**

Mr. Ahmed Ali Hussain, advocate for applicants.  
Mr. Ashiq Ali Anwar Rana, Advocate for Customs department  
a/w Mr. Waseem-ur-Rehman, Advocate.  
Mr. Ilyas Gichki, Caretaker I.O.

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**ORDER**

**MUHAMMAD IQBAL KALHORO J:-** On 20.01.2022 while conducting search of a Bungalow No.103/1, Phase-IV, DHA, Karachi on a tip off, Customs officials recovered smuggled foreign-origin whiskey and bear-- 14 cartons, 109 bottles and 62 cans-- and arrested applicants who were available there. They then led the officials to bungalow No.54/11/II-B Phase-V, DHA, and bungalow No.53-C Phase-I, DHA, Karachi from where recovery of 173 cartons, 620 bottles and 285 cans; and 183 cartons and 1472 bottles of the same liquor was respectively effected. Necessary documents were prepared and applicants were brought at relevant Police Station where instant FIR No.M-3232/DCI/Siez/2022 u/s 2(s), 16 & 178 of the Customs Act, 1969, punishable under Clauses (8) & 89 of sub section (1) r/w sub section (2) of section 156 of the Customs Act, 1969, was registered.

2. It is informed that in investigation as many as 9 persons including applicants were identified connected with the alleged offence and against whom final Challan has been submitted. Out of them, five are on ad-interim pre-arrest bail, and remaining two, apart from applicants, namely Haresh and Sanjay, subsequently arrested, are in jail.

3. Learned counsel in this backdrop has argued that applicants are innocent, have been falsely implicated in this case, they have nothing to do with the alleged premises, they are simply household workers cum drivers of the owners of the premises who have been arraigned as main accused in the case and are on bail, investigation has been finalized and Challan (Report u/s 173 CrPC) has been submitted, the alleged offences do not fall within the prohibitory clause of section 497 CrPC as such applicants are entitled to concession of bail.

4. On the other hand learned counsel for Customs department and the IO have opposed bail plea of the applicants and state that the applicants were arrested from the spot from where a huge quantity of smuggled foreign whiskey was recovered.

5. We have considered submissions of the parties and perused material available on record. Memo of recovery of smuggled goods from bungalow No.103, where applicants were allegedly present, is dated 19.01.2022 at 1900 hours. Whereas, a copy of a notice under section 171 of the Customs Act, 1969 submitted by the IO in support of case shows that the team to visit and search the said premises was constituted on 20.01.2022 after one day of alleged recovery from the said place. This apparent anomaly, despite our request, has not been explained: team formed on 20.01.2022 to visit the site, the recovery effected from there on 19.01.2022. It is not explained either that when recovery was effected on 19.01.2022, why applicants, allegedly present in the premises, were not arrested then and there as it is informed that their arrest materialized on 20.1.2022. Besides, except presence in the said premises, which apparently is not owned by applicants, *prima facie* nothing suggesting that seized liquor was smuggled by them or they have a hand of a sort in it has been alluded. This fact needs to be determined in the trial. The investigation is already over and the Challan has been submitted. The offences do not fall within prohibitory clause of section 497 CrPC is not even disputed. It is settled that bail in such cases is a rule and refusal an exception.

6. We, for foregoing discussion, are of the view that the applicants have been able to make out a case for bail, a temporary arrangement that is subject to final decision to be made in the case after recording of evidence. Accordingly, the bail

applications in hand are allowed and the applicants are granted bail subject to furnishing a solvent surety in the sum of Rs.500,000/- each and PR bond in the same amount to be executed to the satisfaction of the trial Court..

Bail applications are disposed of in the above terms. The observations made hereinabove are however tentative in nature and would not prejudice case of either party at trial.

JUDGE

JUDGE

Ayaz Gul