

THE HIGH COURT OF SINDH KARACHI

Spl. Cr. Bail Application No. 65 of 2023

For hearing of Bail Application.

Applicant/ Accused : Tanveer Hussain son of Tauqeer Hussain through M/s. Ameer Ali Mahesar and Amjad Ali Dayo, Advocates.

The State : Through Zulfiqar Ali Arain, Advocate and Mobashir Ahmed Mirza, Assistant Attorney General for Pakistan.

Spl. Cr. Bail Application No. 69 of 2023

For hearing of Bail Application.

Applicant/ Accused : Danish Qureshi son of Nizamuddin Qureshi through Mr. Muhammad Asif Arain, Advocate.

The State : Through Zulfiqar Ali Arain, Advocate and Mobashir Ahmed Mirza, Assistant Attorney General for Pakistan.

Date of hearing : 30-10-2023

Date of order : 30-10-2023

*FIR No. 1/ST/Shezan Enterprises/2022-23
U/S: 2(37), 2(14)(a) & (b), 3(1)(a)&(b),
7(1), 8(1)(a), (ca)(d), 8A, 11, 21, 22(1),
23(1), 26(1) & 73, 33(11) (13) (16) & 37-A
Of the Sales Tax Act, 1990
P.S. Directorate of I & I, Hyderabad*

ORDER

Adnan Iqbal Chaudhry J. - The Applicants seek post-arrest bail in the aforesaid crime after the same has been declined by the Special Judge (Customs, Taxation & Anti-Smuggling) by orders dated 16-09-2023 and 23-08-2023 respectively.

2. Heard the counsel for the Applicants, the Special Prosecutor for DG I&I-IR, the Assistant Attorney General, and perused the record. The latter of course oppose the grant of bail.

3. The Applicant Danish Qureshi was arrested under section 37A of the Sales Tax Act, 1990 and booked for 'tax fraud' as defined in section 2(37) of the Act for making and using fake/flying sales tax invoices during the period 2019 to 2021. As per the FIR, the Applicant Danish Qureshi as sole proprietor of Shezan Enterprises, declared substantial purchases to claim input tax of Rs. 176,672,517/, whereas most of the his alleged suppliers were either blacklisted or suspended persons; that the business premises of the Applicant did not exist at the given address; that the invoices generated to show output tax of Rs. 166,526,555/- were mostly for alleged sales made to suspended a person; and hence it was apparent that sales tax invoices were fabricated for tax fraud.

As regards the Applicant Tanveer Hussain, he was not nominated in the FIR, but was implicated in the second interim challan with the allegation that the IP address of the computer system through which the sales tax returns were filed, lead the I.O. to Tanveer, who was an accountant working for another company; and hence he was complicit in the offence as an aider and abettor.

4. The defense of the Applicant Danish Qureshi is that he was a mechanic by profession and an illiterate person who was approached by the co-accused Farhan, Fayaz and Arif with a job offer, and who used his CNIC to set-up Shezan Enterprise and to open bank accounts; and that neither the sales tax invoices nor the sales tax returns were prepared by him. The investigation made thus far into the data collected from the cell phone of Danish, does go to suggest that the entire operation was being managed by the aforesaid co-accused, two of whom are still absconding. Therefore, at this stage, it has yet to be seen how far the Applicant Danish was complicit in the alleged offences.

As regards the Applicant Tanveer Hussain, the allegation in the challan that “undeniable material evidence” has been recovered from him, is vague. His nexus with the other accused has yet to be proved.

5. Of the offences alleged, only the offences punishable under clauses 5, 11 and 13 of section 33 of the Sales Tax Act fall within the jurisdiction of the Special Judge (Customs, Taxation & Anti-Smuggling). It is not alleged that the Applicants has failed to deposit tax despite notice by an officer of Inland Revenue so as to trigger the offence under clause 5. The punishment of imprisonment under clauses 11 and 13 may or may not follow in addition to fine. In any case, none of the offences alleged against the Applicants fall within the prohibitory clause of section 497 CrPC.

6. Custody of the Applicants is no longer required for investigation. The evidence is documentary and in custody of the DG I&I-IR. There is no chance of its tampering by the Applicants. It is also not alleged that they are a flight risk.

7. In the totality of the aforesaid circumstances, the case against the Applicants is one of further inquiry falling within the ambit of sub-section (2) of section 497 CrPC.

8. For the foregoing reasons the Applicant Tanveer Hussain is granted post-arrest bail in aforesaid FIR subject to furnishing solvent surety in the sum of Rs. 300,000/- (Rupees Three Hundred Thousand only), and Danish Qureshi is granted post-arrest bail in aforesaid FIR subject to furnishing solvent surety in the sum of Rs.500,000 (Rupees Five Hundred thousand only), both with P.R. Bond in like amount to the satisfaction of the trial court

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

JUDGE

*PA/SADAM