

THE HIGH COURT OF SINDH KARACHI

Spl. Cr. Bail Application No. 81 of 2023

For hearing of Bail Application.

Applicant/ Accused : Mustafa Sikander son of Muhammad Sikander through Mr. Raj Ali Wahid Kunwar, Advocate.

Respondent 1 : Through Mr. Khalid Mehmood Rajpar, Special Prosecutor, and Mr. Mubashir Mirza, Assistant Attorney General for Pakistan.

Respondent 2 : Nemo.

Date of hearing : 10-11-2023

Date of order : 10-11-2023

*FIR No. M - 3706/DCI/Seiz/2023
u/s: 2(s) & 16 of the Customs Act, 1969
punishable under clauses (8) & (89) of section 156(1) ibid
P.S. Directorate General, (I&I), Customs, Karachi.*

ORDER

Adnan Iqbal Chaudhry J. - This is the second bail application of the Applicant (Mustafa Sikandar) before this Court. The first bail application, being Special Criminal Bail Application No. 38/2023 was dismissed by order dated 14-07-2023 with a direction to the trial court to examine material witnesses within one month, and with the observation that the Applicant would be at liberty to repeat the bail application thereafter. Subsequently, after examination of four PWs, the Applicant moved a fresh bail application to the Special Judge (Customs), which was declined by order dated 07-10-2023; hence this second bail application before this Court. Though the previous bail application before this Court was dismissed by another Bench, this bail application has been put up before me as the Judge in roster as the Special Appellate Court under the Prevention of Smuggling Act, 1977.

2. The FIR was lodged on 13-05-2023 when the co-accused Muhammad Ali was arrested from the spot with possession of a large quantity of "Boostin Injections" of foreign origin and could not explain how those were imported. Per the FIR, Muhammad Ali named the Applicant as his partner and the person who smuggled such injections into Pakistan. Apparently, Boostin Injections are administered to cows/buffalos for enhancing their capacity to produce milk, and due to its hazardous effect on the quality of milk so produced, the Supreme Court of Pakistan had placed a ban upon the import, manufacturing and sale of Boostin injections *vide* order dated 06-01-2018 passed in C.P. No. 2374-L of 2016.

3. Upon the FIR as aforesaid, the Applicant was arrested on 15-05-2023, but admittedly no recovery was made from him. In the final challan, submitted on 08-08-2023, three other persons were also implicated namely Muhammad Karim, his brother-in-law Muneeb Ahmed, and one Hemon Das, all alleged to be complicit in the crime of smuggling, supplying and selling of Boostin Injections; hence booked for the offence under section 2(s) read with section 16 of the Customs Act, 1969, punishable under clauses (8) and (89) of section 156(1) of the Customs Act, 1969. Allegedly, a number of Boostin Injections were recovered on a raid at the residence of the co-accused Muneeb Ahmed.

4. On 02-06-2023, the co-accused Muhammad Ali pleaded guilty before the trial court, and by judgment of the same day he was convicted for the offence punishable under clause (89) of section 156(1) of the Customs Act. However, apart from a fine of Rs. 500,000/- the sentence of imprisonment awarded to him was only for the period he remained behind bars. Per Mr. Khalid Rajpar Advocate, that judgment has been assailed by the DG I&I (Customs) before this Court *via* Special Criminal Revision No. 162/2023.

5. On 10-06-2023, the co-accused Muneeb Ahmed, from whose residence Boostin injections were recovered, was granted post-arrest bail by the trial court.

6. Heard the counsel for the Applicant, the Special Prosecutor for DG I&I (Customs), and the Assistant Attorney General for Pakistan.

7. Subsequent to the order dated 14-07-2023, by which this Court had dismissed the first bail application of the Applicant, the following evidence transpired upon which the Applicant's second bail application merits consideration.

8. On 17-08-2023, the trial court charged the Applicant with smuggling into Pakistan Boostin Injections of foreign origin that were banned by the order of the Supreme Court of Pakistan as aforesaid. Four PWs have thus far been examined. PW-1, the Intelligence Officer was cross-examined by the Applicant's counsel on 21-08-2023, and PW-4, the Preventive Officer was cross-examined on 25-09-2023. Both of them acknowledged that at the time the FIR was lodged on 13-05-2023 and despite the order of the Supreme Court, Boostin Injections were not included in Appendix-A of the Import Policy Order, which is the negative list of banned items. However, whether that is of any consequence when there are no documents to show how said items were imported, is an aspect yet to be examined by the trial court.

9. Both PW 1 and PW 2 admitted that no recovery has been made from the Applicant. PW-4 also acknowledged that no recovery had been affected on the pointation of the Applicant. Both said PWs also admitted that no documentary evidence was collected during investigation to establish any connection between the co-accused Muhammad Ali and the Applicant. PW-4 also acknowledged that the Applicant was implicated in the case only on the statement of the co-accused Muhammad Ali.

10. While the co-accused Muhammad Ali also implicated the Applicant while pleading guilty before the trial court, under Article 43 of the Qanun-e-Shahadat Order, 1984, a confession is only proof against the person making it, and as against the co-accused being tried jointly for the same offence such confession can at best be considered as circumstantial evidence. Thus far, there does not appear to be any other evidence against the Applicant.

11. In the circumstances discussed above, where no recovery has been made from the Applicant, where the act of smuggling has yet to be established against him, and the only evidence against him thus far is the guilty plea of the convicted accused who has been let off on a lenient sentence, the case against the Applicant is one of further enquiry into his guilt falling within the ambit of sub-section (2) of section 497 CrPC.

12. For the forgoing reasons, the Applicant Mustafa Sikander is granted post-arrest bail in the aforesaid FIR subject to furnishing solvent surety in the sum of Rs. 1,000,000/- (Rupees One Million only) alongwith 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

SHABAN*