

**HIGH COURT OF SINDH, CIRCUIT COURT
AT HYDERABAD**

**Cr. Bail Application No.S-1194 of 2023
[Syed Momin Hussain versus The State]**

Applicant : Through Mr. Farooq H. Naek advocate
a/w Mr. Iftikhar Ahmed Shah advocate

State : Through Mr. Ghulam Abbas Sangi Assistant
Attorney General a/w IO Ghulam Akbar Soomro

Date of hearing: 20.11.2023

Date of decision: 20.11.2023

ORDER

MUHAMMAD KARIM KHAN AGHA J.- Applicant has been booked in Crime No.20 of 2023 registered at FIA Crime Circle Hyderabad under Section 5(2) PCA 1947, Section 156 of Customs Act 1969 read with Section 109 PPC. He had applied for post-arrest bail before learned trial Court/Special Judge Anti-Corruption (Central) Hyderabad, however, it was declined vide Order dated 11.10.2023, hence he has approached this Court for post-arrest bail.

2. Brief facts of the case are that on 19.09.2023 a raid was conducted at the house of applicant/accused by the FIA team in presence of mashirs, where they found number of licensed and unlicensed expensive weapons, jewelry, non-custom paid vehicles, hunting animal trophies, expensive watches, play stations, Pakistani currency, number of bullets of various weapons, various mobile phones and laptops, which according to FIR are beyond the source of income of the applicant and also amounted to smuggling.

3. I have heard the learned counsel for the applicant as well as learned Assistant Attorney General.

4. Learned counsel for the applicant, amongst other arguments, has submitted that this matter does not fall under the Customs Act as Section 156 of the Customs Act is not applicable since the matter is triable before learned Special Judge; that the applicant is living in a large house where 19 other people of the family are also residing; that there is no clue that the items recovered from the house actually belong to applicant. He has also pointed out nowhere in the FIR and challan the actual source of income of the applicant has been mentioned; that

the applicant has been granted post and pre-arrest bail by the learned trial Court in other two matters and one of them concerning assets beyond known source of income, is a property matter of far greater value than the recoveries in this case; that Section 5(2) of PCA carries maximum punishment of seven years and that applicant cannot be kept behind bars on account of recovery which actually does not belong to him, therefore, the case against him is of further inquiry.

5. Learned Assistant Attorney General did not oppose the bail application.

6. Notwithstanding to no objection of learned Assistant Attorney General, I have gone through the record and found that based on the particular facts and circumstances of the case it is difficult to see that Section 156 of the Customs Act is attracted in this case, which is triable by a Special Court. Even otherwise it is an admitted fact that recoveries have been made from the house where numerous other persons are also living, therefore, it cannot be ascertained that these recoveries all actually belong to applicant, especially when said recoveries include laptops and play stations, hence this case falls within the ambit of further inquiry. I have also noted that neither in the FIR nor in challan any reference as to the actual source of income of the applicant has been made. It is fundamental principle that in the case of assets beyond known source of income all income of the applicant is to be collected first, which might include his salary, agricultural or any other income. Only based on recoveries from a joint house, it is difficult to prima facie conclude that these recoveries actually belong to the applicant and even if they do how without an ascertained source of income of the applicant these assets can be said to be beyond his known source of income?

7. In view of the above discussion, applicant has made out a case of further inquiry. Accordingly he is admitted to post-arrest bail, subject to furnishing solvent surety in the sum of Rs.10,00,000/- and a P.R Bond in the like amount to the satisfaction of learned trial Court. However, applicant shall continue to cooperate with the investigation and regularly attend the trial.

8. Needless to mention here that observations made hereinabove are tentative in nature and the same will not prejudice the case of either party at trial.

9. Captioned bail application stands disposed of accordingly.

JUDGE