

THE HIGH COURT OF SINDH KARACHI

Spl. Cr. Bail Application No. 89 of 2023

For hearing of Bail Application.

Applicant/ Accused : Abdul Aziz son of Muhammad Anwar through Mr. Iftikhar Hussain Advocate.

State : Directorate General, Post Clearance Audit (South), through Mr. Ali Tahir Advocate alongwith Mr. Muhammad Hashim Advocate, the I.O. Mr. Hubban Muhi-ud-Din & Appraising Officer present.

Mr. Mubashir Mirza, Assistant Attorney General for Pakistan.

Date of hearing : 23-11-2023

Date of order : 23-11-2023

*FIR No.PCA/6864/2022/Audit
u/s: 25, 26A, 26B, 32A and 187 of the Customs Act, 1969
punishable under clauses 12A, 12B, 14A and
77(ii) of S. 156(1) of the Act ibid
P.S. Directorate of Post Clearance Audit (South) Karachi*

ORDER

Adnan Iqbal Chaudhry J. - The Applicant prays for post-arrest bail in the aforesaid crime after he was denied the same by the Special Judge (Customs, Taxation & Anti-Smuggling) Karachi *vide* order dated 31-10-2023.

2. The FIR was lodged by the Directorate General, Post Clearance Audit, Customs on 04-10-2023, alleging that while auditing imports of solar panels into Pakistan it transpired that M/s. Smart Impex, the sole proprietorship of the Applicant, had over-valued solar panels imported by it from China under 59 GDs during the period 2018-19 and 2022-23; that while the *bonafide* value of Chinese origin solar panels was below USD 0.22 per watt, the Applicant had declared them between USD 0.23 per watt and USD 0.44 per watt to over-invoice the imports by Rs. 631.9 million; that the entire payment was

remitted to a single company in Dubai, namely Ocular General Trading LLC; that these solar panels were then sold in the local market at a far lesser price than the declared value; and therefore it was evident that purpose of over-valuing the solar panels was to launder money abroad, hence the offence of fiscal fraud under section 32A of the Customs Act, punishable under clause (14A) of section 156(1) of said Act. It is further alleged that the Applicant did not respond to summons nor provided access to his record for audit proceedings in violation of sections 26A and 26B of the Customs Act, thereby committing offences punishable under clauses (12A), (12B) and (77)(ii) of section 156(1) of said Act.

3. Heard the Applicant's counsel, the Special Prosecutor for Directorate of Post Clearance Audit (Customs), and the Assistant Attorney General for Pakistan.

4. As per the valuation rulings placed on the record, determined under section 25-A of the Customs Act, the customs value of solar panels imported from China was first determined by Valuation Ruling No. 620/2013, dated 12-12-2013, @ USD 0.70 per watt, but was withdrawn in 2017. Thereafter, by Valuation Ruling No. 1653/2022, dated 23-05-2022, the customs value of unspecified Chinese-origin solar panels was determined @ USD 0.20 per watt; and recently, by Valuation Ruling No. 1799/2023 dated 04-09-2023, that value was further lowered to USD 0.14 per watt.

5. From the aforesaid it appears that for the Chinese-origin solar panels imported by the Applicant during 2018-2019, the alleged declared value @ USD 0.23 per watt to USD 0.44 per watt was still less than the valuation ruling that existed up till 2017. Regards the imports made during 2022-23, the challan does not specify the GDs under which solar panels were allegedly declared in excess of the valuation ruling of USD 0.20 per watt (dated 23-05-2022). It is further submitted by the Applicant's counsel that no solar panels were imported by the Applicant after 04-09-2023 so as to attract the rate of USD 0.14 per watt under Valuation Ruling No. 1799/2023.

6. Therefore, the allegation that the solar panels imported by the Applicant were over-valued for the purposes of routing money abroad, has yet to be proved. Admittedly, said solar panels have not been seized thus far so as to assess their real value. Nor has the I.O. been able to obtain a verification of the invoices from the shipper. The status of the company in Dubai to whom payment was remitted, has also not been ascertained thus far.

7. Admittedly, the Applicant paid the customs duties and taxes over the declared value of the goods. Since the allegation is not of under-invoicing, but of over-invoicing, it is not a case of evasion of customs duties and taxes.

8. The allegations in the challan as to the over-valuation of imports made by M/s Smart Impex, as to its financials, and as to the role of the Applicant as a front man of the co-accused, are all questions that require further inquiry. Thus the case falls within the ambit of sub-section (2) of section 497 CrPC. As regards the offences alleged for suppressing documents for audit, none of the offences punishable under clauses (12A), (12B) and (77)(ii) of section 156(1) of the Customs Act fall within the prohibitory clause of section 497 CrPC.

9. The custody of the Applicant is no longer required for investigation, and therefore keeping him behind bars at this stage serves no purpose.

10. For the foregoing reasons, the Applicant Abdul Aziz 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*