

## THE HIGH COURT OF SINDH AT KARACHI

### Special Criminal Bail Application No. 72 of 2024

[Attaullah & another v. The State]

Applicants : (i) Attaullah son of Amanullah  
(ii) Abdul Wasay son of Abdul Razzaq through Mr. Aamir Mansoob Qureshi Advocate.

Respondent : The State, through Farooq Hashmat Abbasi, Special Prosecutor, along with I.O. Abdul Salam.

Date of hearing : 22-08-2024

Date of decision : 22-08-2024

*FIR No. ASO-599/2024-HQ  
u/s: 2(s), 16, 17, 178, 187 of the Customs Act, 1969, punishable under clauses 8(i)(e), 85, 89 of section 156(1), r/w section 156(2) of the Customs Act, and section 3(1) of the Import & Exports Control Act, 1950.  
P.S. Collectorate of Customs Endorsement, Karachi*

### **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-I), Karachi by order dated 25.07.2024.

2. The FIR alleged that at 02:30 a.m. on 01.06.2024, after obtaining search warrants under section 162 of the Customs Act, the officers of Collectorate of Customs Enforcement proceeded to godowns at Band Gali, Light House Market, M.A. Jinnah Road on a tip that a substantial quantity of foreign-origin smuggled fabric was stored thereat; that the Applicants and other godown owners were present during the search, but could not produce legal documents of the foreign-origin fabric found thereat which was thus seized. It is further alleged, that thereafter the Customs officers proceeded to Adamjee Budha Bhai Street to search other godowns, but when they reached there, they were attacked with stones, sticks and firing by a

mob of around 100-150 persons including the Applicants; that resultantly, some of the Customs officers were injured and their vehicles damaged; that law and order was restored on the arrival of the Police and Rangers; that the Applicants were arrested and booked for possession of smuggled goods, punishable under clauses 8(i)(e) and 89(i) of section 156(1) of the Customs Act; and for the offence of assaulting Customs officers, punishable under clause 85 of the same section.

3. Heard learned counsel and perused the record.

4. The FIR places the Applicants at two spots for two distinct incidents *albeit* one after the other. The first, at the godowns at Band Gali, Light House Market from where the alleged smuggled fabric was seized, which constituted offences under clauses 8(i) and 89(i) of section 156(1) of the Customs Act; and the second, at Adamjee Budha Bhai Street, where Customs officers were attacked, which constituted the offence under clause 85 of section 156(1) of said Act.

5. Learned counsel for the Applicants submits that they were never present at the godowns at Band Gali; that they have no nexus with the alleged smuggled fabric seized from that location as they are neither fabric traders, nor own or use godowns thereat. He submits that the Applicants were present at Adamjee Budha Bhai Street when a skirmish broke out between a mob and Customs officers, and the Applicants were roped in along with that mob and arrested on the false allegation that they were leading such mob.

6. To substantiate the submission that the Applicants have been falsely implicated in the first incident *viz.* of dealing in smuggled fabric, learned counsel for the Applicants places on record a copy of another FIR No. 39/2024 lodged against the Applicants at P.S. Risala for the second incident *viz.* the attack on Customs officers *albeit* for offences under the PPC. Indeed, from that FIR it appears that the Applicants were arrested only for the second incident but booked for offences both under the PPC and the Customs Act.

7. As regards the first incident and the offence of possessing smuggled fabric, the final challan does not reveal the evidence that could lead to the assumption that the fabric seized during the search was of foreign-origin.

8. As regards the second incident and the offence of assaulting Customs officers, the submission that the Applicants were not complicit in the assault but were rounded-up merely due to their presence at the spot, that is a question that can only be determined after a trial. For that second incident, and to the extent of offences under the PPC recorded in FIR No. 39/2024, the Applicants have already been granted post-arrest bail by the Sessions Court. The corresponding offence under clause 85 of section 156(1) of the Customs Act does not carry imprisonment exceeding two years, and therefore does not fall within the prohibitory clause of section 497 Cr.P.C.

9. In view of the foregoing, the case against the Applicants is one of further inquiry into their guilt, falling within the ambit of sub-section (2) of section 497 Cr.P.C. Therefore, the Applicants (i) Attaullah and (ii) Abdul Wasay are granted bail in FIR No. ASO-599/2024-HQ subject to furnishing solvent surety in the sum of Rs. 500,000/- [Rupees Five Hundred Thousand only] each, alongwith P.R. Bond in the like amount to the satisfaction of the trial court.

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

**JUDGE**

Karachi  
Dated: 22-08-2024

\*PA/SADAM