

THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Bail Application No. 81 of 2024

[Syed Umair Riaz Gillani v. The State]

Applicant : Syed Umair Riaz Gillani son of Riaz Hussain Gillani through Mr. Aqil Ahmed, Advocate.

Respondent : The State, through Naimatullah Soomro, Special Prosecutor, along with I.O. Ahmed Ali.

Date of hearing : 09-09-2024

Date of decision : 09-09-2024

*FIR No. SI/MISC/01/2024/AFU/JIAP
U/S: 32, 32-A, 79 and 192 of the Customs Act, 1969
r/w Section 3(1) of the Import & Export (Control) Act,
1950, punishable under clause 14, 14A, 46 & 86 of
Sub-section (1) of Section 156 of the Act and Section 3(3)
of the Import & Export (Control) Act, 1950
P.S. Collectorate of Customs, JIAP, Karachi*

ORDER

Adnan Iqbal Chaudhry J. - The Applicant seeks 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 15.08.2024.

2. As per the FIR, the scam that was unearthed was that during the period from 01.08.2022 to 31.01.2024, 36 consignments were cleared from the Collectorate of Customs Jinnah Airport, Karachi, all through the clearing agent namely, BHF Services International by way of tampering the detention receipts issued by the examining officer of the air freight unit to reduce the declared value goods and by changing the description, which receipts then uploaded on the Weboc. The total loss of customs duties and taxes is assessed at Rs.29.131 Million. The sole proprietor of the clearing agency is alleged to be one Mukaram Ali and as per the investigation, he had allowed the user ID and password of his clearing agency to be used by others on receiving consideration.

3. Heard learned counsel and perused the record.

4. The Applicant was implicated in the interim challan dated 02.03.2024 in connection with two of the consignments/GDs listed in the FIR. It is alleged that the importer of those consignments stated to the I.O. that they had given documents of clearing to the applicant, who incidentally met him at the airport and offered to clear his consignments. It is then alleged that the Applicant used the ID and password of BHF Services to upload a tampered detention receipts, which shows reduced value of goods, although he had collected the amount of duties and taxes from the importer at the full declared value. The FIR was lodged on 13.02.2024 for offences in respect of 36 consignments cleared during the period of two years. The Applicant was not arrayed as an accused inasmuch as all those consignments were cleared from the user ID and password of clearing agent namely; BHF Services.

5. Admittedly, the Applicant is not proprietor of BHF Services, the allegation against him is that in connivance with the clearing agent, he used his password and ID and then tampered detention receipts to clear the goods for lesser duties and taxes. On being queried as to why the importer of the consignments have not been arrayed as accused, the I.O. informs that the case of the prosecution is that the importer had given correct and true documentation to the Applicant, who tampered the detention receipts for his own benefit. That allegation appears to be implausible when none of the other documents such as the G.D., commercial invoice etc., were not tampered and it has yet to be explained how the goods could have been assessed at the value mentioned in the detention receipt as against the one mentioned in the G.D. and commercial invoice.

6. It is also appears to be implausible that the importer engaged the services of the Applicant who then randomly met him at the airport and without verifying whether he was a customs clearing agent or not.

7. In view of the foregoing, the case against the Applicant is one of further inquiry into the guilt, falling within the ambit of sub-section (2) of section 497 Cr.P.C. Punishment for the offence under Section 32 is imprisonment for a term not exceeding three years, “or to fine”, or to both as prescribed in clause 14 of Section 156(1) of the Customs Act, 1969. Similarly, punishment for the offence under Section 32-A is prescribed in clause 14-A for a term which may extend to ten years, not less than five years, “or to fine”, or to both. Therefore, it appears that apart from fine, the punishment for imprisonment may or may not follow.

8. For the foregoing reasons, the Applicant, Syed Umair Riaz Gillani is granted bail subject to furnishing solvent surety in the sum of Rs.500,000/- [Rupees Five Hundred Thousand only] 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: 09-09-2024

*PA/SADAM