

3. Learned counsel for applicant contends that boat of applicant got fire and totally burnt, coast guards rescued them and handed over to custom authorities after saving their lives however custom authorities with malafide intention booked the applicant and others in heinous crime without any reason. It is contended that since boat was burnt then how the case property could remain save and could be recovered; that it is unbelievable that when contraband was in wet condition how it did not dissolved in salty water; that there is violation of section 103 CrPC as no private witness was associate while recovery proceedings; that applicant has been remanded to judicial custody and is no more required for further investigation; that applicant has no previous criminal record; that no any specific role has been assigned to him.

4. On the contrary, learned Special Prosecutor, Customs argued that applicant alongwith other accused persons were apprehended by the officers of PMSA and 7.5 KGs of Ice methamphetamine was recovered; question of associating private witnesses in such cases does not arise, that case of applicant falls within the prohibitory clause hence bail application is liable to be dismissed.

5. Learned counsel for applicant has himself produced photographs of subject boat and recovery efforts being undertaken by PMSA; these photographs themselves show that still there were some portions of boat that did not get fire, so his contention that all contrabands would have burnt after boat caught fire, is without force. Further his contention that boat sank and contraband could not be recovered as they may have dissolved in salty water is also

without force as according to prosecution recovered contrabands were packed in plastic boxes. Since recovery was made in open sea hence association of private witness is out of question; even otherwise section 25 of the CNS Act, 1997 exempts the provisions of section 103 Cr.P.C. Applicant has failed to demonstrate any reason/enmity of officials of PMSA with him to allegedly involve him in present case; offence falls within the prohibitory clause and section 51 of the CNS Act 1997 bars grant of bail where the offence is punishable with death/life imprisonment. Hence bail application is dismissed.

These tentative assessments will not affect merits of the case at trial.

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FIR No.549/2022 under sections 3 and 9 of the Fishery Act was registered on 02.10.2022 at PS Docks by Complainant Lieutenant Mohammad Sujawal posted at PMSA and in that connection one Jameel Ahmed has made an application under section 516-A Cr.PC before concerned Judicial Magistrate for release of said boat i.e. Al-Omar Farooq boat. It is furthered contended that facts are contradictory because in paragraph No.9 of the challan it is mentioned that boat got fire hence identification documents and mobile phones were destroyed, but fact is that it was not Al-Omar Farooq boat but another stateless boat had caught fire regarding which FIR No.ASO-164/HQ was registered; that it is alleged that applicant/accused persons were smuggling 28 KGs Chars from Iran to Yemen which collapses entire prosecution case as the expenses from Iran to Yemen on such boat would be not less than five millions rupees however in FIR it is alleged that each applicant was paid Rs.15,000/- for the journey; that actually Al-Omar Farooq boat went out of order in Pakistani territorial waters and in order to bright it on the shores another boat Al-Qamar Farooq sailed to tow the subject boat; that neither any such incident as alleged by prosecution has taken place nor alleged recovery was affected, same was foisted upon the accused persons with malafide intention.

4. On the contrary, learned Special Prosecutor, Customs argued that admittedly four accused persons were arrested from subject boat by PMSA and from their possession 28 packets of Charas weighing 28 KGs were recovered; that boat was flagless however accused named it as Al-Omar Farooq which could not be verified; that there is no enmity of complainant party with accused persons; hence bail is liable to be dismissed.

5. Contention that in FIR boat was shown as stateless and in challan named as Al-Omar Farooq boat; is contrary to the record as interim challan itself shows it to be stateless fishing wooden boat (Un-named and bearing registration No.Nil) as well paragraph No.9 of challan shows that Nabi Bukhsh was nakhuda of that boat and this accused person claimed the boat to be registered under name of Al-Omar Farooq with Registration No.16258. However the fact is that the boat was flagless, unnamed and devoid of any registration number painted on that boat. Further applicants tried to confuse their boat with another boat that is mentioned in FIR No.549/2022 however they failed to show any connection between the two boats.

6. Questions that whether or not smuggling on such like boats from Iran to Yamen costs more than five million rupees while applicants were hired for Rs.15,000/- each for smuggling of subject contrabands and that actually Al-Omar Farooq boat got issue in its engine in Pakistani territorial waters and in order to bring it on the shores another boat Al-Qamar Farooq sailed to tow it; are the questions that fall within the ambit of deeper appreciation which is not available at bail stage.

7. In the case reported as Muhammad Noman Munir vs. The State and another (2020 SCMR 1257), honourable Apex Court declined bail to an accused from whom 1380 grams of cannabis with 7 grams of heroin was recovered by the police officials, however in the present case, from the possession of the applicants 28 KGs charas was recovered by the officers of PMSA, the contention of learned counsel for the applicant that charas was foisted upon them is a matter which could only be dealt with after recording evidence; it is

well established principle of law that at bail stage only tentative assessment is to be undertaken and no deeper examination is permissible.

8. With regard to alleged false involvement of applicants due any enmity the officers of PMSA or officers of Anti-/Smuggling Organization, Customs, is a question which can only be determined at the time of trial and not at this stage; thus, tentative assessment of material available on record, *prima facie* leads to a conclusion that there no *reasonable grounds* exist to believe that it is a case of further enquiry. As per section 51 of the CNS Act, 1997 there is bar for grant of bail where offence is punishment for life. For above reasons, this bail application is hereby dismissed. Since these are tentative assessments hence will not affect merits of the case at trial.

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