

# THE HIGH COURT OF SINDH KARACHI

## Spl. Cr. Bail Application No. 09 of 2024

### For hearing of Bail Application.

Applicants/ Accused : Hazrat Hussain son of Abdul Mannan and Afsar Khan son of Saeed Gul through Mr. Muhammad Naeem, Advocate.

Complainant/State : Collectorate of Customs, Hyderabad, through Mr. Zulfiqar Ali Arain, Advocate, alongwith Complainant namely; Muhammad Asim and the I.O. namely; Rana Shahbaz, both are present in Court.

Date of hearing : 26-12-2024

Date of order : 26-02-2024

FIR No. 03/2023-24  
U/s: 2(s), 16, 32, 32A & 154 of Customs Act, 1969  
Punishable under Clause (8) and (89) of S. 156 (1) of the Act ibid  
P.S. Anti-Smuggling Organization, Hyderabad

## ORDER

**Adnan Iqbal Chaudhry J.** - The Applicants pray for post-arrest bail in the aforesaid crime after they were denied the same by the Special Judge (Customs, Taxation & Anti-Smuggling) Karachi *vide* order dated 23-01-2024.

2. The offence alleged against the Applicants is of smuggling 25,000 liters of high-speed diesel of foreign origin. The Applicants were apprehended on 18-12-2023, the Applicant No.1 as the driver of the tanker that was carrying the diesel, and the Applicant No.2 as his companion/helper. The Applicant No.1 produced a transshipment advice dated 17-12-2023 bearing Serial No. 2051, issued by Kepler Petroleum (Private) Limited at Karachi to demonstrate the source of the goods. However, on investigation, Kepler Petroleum denied having issued the same and termed it as fake.

3. Heard the learned counsel. The investigation thus far is that the transshipment advice in respect of the goods that was seized from the

Applicant No.1, has been denied by the issuer i.e. Kepler Petroleum (Private) Limited; and that the sample of the goods sent to the laboratory for test returned with the observation that “*the submitted sample does not meet the OGRA specifications*”. Based on these facts, it is alleged by the I.O. that the goods are of foreign origin. In my view, the question whether the transshipment advice is fabricated or not, is a question of fact which yet to be determined by the trial Court. Till such time the extra judicial confession of the Applicant No.1 that the goods were delivered to him by another person, has no value. Nonetheless, that by itself also does not demonstrate that the goods are of foreign origin. Even the laboratory test of the goods is not explicitly to indicate the origin of the goods.

4. As regards the Applicant No.2, his explanation is that he accompanied the Applicant No.1 only as helper for the journey and he had no knowledge that the goods were smuggled. The same cannot be ruled out at this stage. The investigation thus far does not discussed whether the Applicant No.2 was complicit in the alleged offence or whether he was unwary companion.

5. Therefore, the case against the Applicants is one of further enquiry falling within the ambit of sub-section (2) of section 497 CrPC. The investigation is complete and the custody of the Applicants is no longer required for said purpose. Keeping them behind bars indefinitely serves no purpose.

6. For the foregoing reasons, the Applicants Hazrat and Afsar Khan are granted post-arrest bail in the FIR No. 03/2023-24 in the following terms:

- (a) The Applicant No.1 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 like amount to the satisfaction of the trial court.
- (b) The Applicant No.2 is granted bail subject to furnishing solvent surety in the sum of Rs. 100,000/- (Rupees One Hundred Thousand 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.

SHABAN\*

**JUDGE**