

THE HIGH COURT OF SINDH KARACHI

Spl. Cr. Bail Application No. 21 of 2024

For hearing of Bail Application.

Applicant/ Accused : Muhammad Sibtain Abbas son of Ghulam Abbas through Mr. Arif Manthar Solangi, Advocate.

The State : Through Mr. Ghulam Asghar Pathan, Special Prosecutor along with I.O. Tahir Zafar, Audit Officer, I&I-IR, Karachi.

Date of hearing : 28-03-2024

Date of order : 28-03-2024

*FIR No. 05/2023
u/s: 3, 6, 7, 8, 8A, 22, 23, 26 & 73 Sales Tax Act, 1990
punishable u/s 33(3)(5)(4)(11c)(13) r/w section 2(37) ibid
P.S. Directorate of I&I-IR, Karachi.*

ORDER

Adnan Iqbal Chaudhry J. - The Applicant seeks for post-arrest bail in the aforesaid crime after the same has been declined by the Special Judge (Customs, Taxation & Anti-Smuggling) Karachi by order dated 15-02-2024.

2. As per the FIR, from sales tax returns filed by M/s. Al-Abbas Traders, it was suspected of claiming fake input tax and issuing and using fake and flying sales tax invoices, which constituted a tax fraud as defined under section 2(37) of the Sales Tax Act, 1990, and which was an offence punishable *inter alia* under clauses 11(c) and 13 of section 33 of said Act.

3. The FIR noted that even though Al-Abbas Traders was registered for sales tax as a distributor of goods only on 23-05-2023, but from that time till July 2023, it reported purchases of an unbelievable sum of Rs. 11.433 Trillion, claimed input tax of Rs. 2.058 Trillion, declared supplies of Rs. 32.856 Billion to charge out-put tax

of Rs. 5.914 Billion; that substantial purchases had been shown from M/s. Nouman Enterprises whose sales tax registration had already been suspended; and that the two major buyers of Al-Abbas Traders were untraceable. Sales tax registration of Al-Abbas Traders was suspended by the RTO-II Karachi on 11-09-2023. The original Form 181 of Al-Abbas Traders described it has a partnership firm of Sadam Hussain and Muhammad Sohail with the Applicant as the Principal Officer. Sadam Hussain expressed ignorance of the existence of Al-Abbas Traders. Preliminary investigation revealed a bank account of Al-Abbas Traders at a bank in Multan where the Applicant too maintained bank accounts. The bank account of Al-Abbas Traders was opened by the Applicant's brother who had named him as next of kin. The IP address of the computer system from which the sales tax returns in questions were uploaded were traced to the Applicant; hence he was arrested.

4. The Applicant turned out to be an income tax practitioner, providing services under the name and style 'Smartax', also named as the advisor of Al-Abbas Trading in the initial Form 181. Learned counsel for the Applicant submits that he was not a partner of Al-Abbas Traders but had been engaged for remuneration by an officer of the RTO Multan for filing sales tax returns for Al-Abbas Traders; that there was no evidence that he was operating any bank account for Al-Abbas Traders; that none of the actual partners of Al-Abbas Traders had been arrested; that the Department had not initiated any adjudication proceedings against him; and thus the case against the Applicant was one of further enquiry.

Learned Special Prosecutor of course opposes bail. His submissions are recorded in the discussion that follows.

5. Heard learned counsel and perused the record.

6. The fact that Al-Abbas Traders has no real business to justify its sales tax returns, does not appear to be doubtful. Though the Applicant denies to be involved in such business, he does not deny

that the sales tax returns in question were uploaded by him. The original Form 181 of Al-Abbas Traders names him as the Principal Officer and he also appears to be the person in control of its bank account. The sales tax registration of Al-Abbas Trading was also activated with the thumb impression of the Applicant.

7. Along with his comments to the bail application, the I.O. has brought on record further facts that go to incriminate the Applicant as follows:

- (a) There are 4 other FIRs against the Applicant for issuing and using fake and flying sales tax invoices. FIR No. IR-UNIT-03/BWP/2023-24/01 dated 12-02-2024 was lodged at RTO Bahawalpur in connection with M/s. Hayat Trading Company. FIR No. 2/2023 dated 22-08-2023 was lodged at RTO Multan in connection with M/s. Noman Enterprises. FIR No. 07/2023 dated 14-12-2023 was lodged by the Directorate of I&I-IR at Lahore in connection with M/s Mughal Enterprises. FIR No. 01/2024 dated 05-01-2024 was lodged at RTO Rawalpindi in connection with M/s Shaheen Matting Center.
- (b) On a recommendation made by the Federal Tax Ombudsman, the Applicant is under inquiry under section 37 of the Sales Tax Act for hacking into and misusing the sales tax returns of the complainant M/s. Muhammadi Box.
- (c) The data seized from the Applicant's cell-phone and lap-top reveals that he generates fake sales tax invoices and returns for registered persons, and that he uses social media platforms such as Whatsapp, Snapchat and Facebook for soliciting commission for providing fake and flying invoices to registered persons.

8. Learned counsel for the Applicant is not able to rebut the above investigation. While the absence of an adjudication of tax liability in

departmental proceedings is a consideration in granting bail, it is not the only consideration.

9. It is further submitted by the Special Prosecutor that since the Applicant did not cooperate in the investigation, the final challan will take some time.

10. Even though the offences alleged, the ones that fall within the domain of the Special Judge, do not fall within the prohibitory clause of section 497 Cr.PC., there is force in the submission of the Special Prosecutor that while the data seized from the Applicant is still being investigated for linking the output-input adjustment of tax and which will also lead to accomplices and other beneficiaries, if the Applicant is released at this stage, he is likely to delete/tamper with that data which exists on-line over social media platforms. The prosecution has therefore been able to draw an exception to the rule of bail.

11. For the foregoing reasons, I am not inclined to grant bail to the Applicant at this stage. Bail application is dismissed.

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