

THE HIGH COURT OF SINDH KARACHI

Spl. Cr. Bail Application No. 34 of 2024

For hearing of Bail Application.

Applicant/ Accused : Muzamil Akbar Moten son of Akber G. Moten through M/s. Abid S. Zuberi, Ali Abid Zuberi, Sheikh M. Danial, M. Arif Ansari, Manzoor Hussain and Hira Ahmed, Advocates.

The State : Director of Intelligence & Investigation-IR, through Syed Hamid Raza, Special Prosecutor Customs along with Mr. Muhammad Junaid, I.O. / Deputy Director I&I.

Ms. Alizeh Bashir, Assistant Attorney General for Pakistan.

Date of hearing : 15-04-2024

Date of order : 15-04-2024

*FIR No. 01/2024
u/s: 3, 6, 7, 8 8-A, 10, 22, 23, 26 and 73 of the Sales Tax Act, 1990
punishable under Section 33(3), 33(5), 33(4), 33(11c), 33(13) of the Act ibid.
Tax fraud as defined u/s 2(37) and liable to be prosecuted under sections 37A
and 37B of the Sales Tax Act, 1990 r/w relevant provisions of Cr.P.C.
P.S. Directorate of Intelligence & Investigation-IR*

ORDER

Adnan Iqbal Chaudhry J. - The Applicant seeks post-arrest bail in the aforesaid crime as he has been declined the same by the Special Judge (Customs, Taxation & Anti-Smuggling) by order dated 18-03-2024.

2. The FIR, lodged on 06.02.2024, alleged that during the tax period October 2019 to August 2023, the Applicant carrying on business as M/s. Marco Tex had defrauded the exchequer of sales tax

of Rs. 994,710,333/- approximately. The gist of the tax fraud¹ alleged in the FIR was as follows:

- (a) that the Applicant had claimed a sales tax refund amounting to Rs. 631,747,019/- emanating from input tax allegedly paid on purchases made from suppliers whose sales tax registration was either suspended or who were blacklisted; and that on a physical verification such suppliers were not found carrying on business at their registered premises;
- (b) that the Applicant had claimed a sales tax refund amounting to Rs. 362,963,314/- emanating from input tax allegedly paid on purchases made from suppliers who were non-existent;
- (c) from the above, it was inferred that the Applicant had claimed refunds based on fake and flying sales tax invoices. The Applicant was therefore arrested on 06.02.2024 under section 37A of the Sales Tax Act.

3. It is alleged in the interim challan dated 06.02.2024 that on interrogation the Applicant stated that he had made purchases from the open market from un-registered suppliers and then procured fake and flying sales tax invoices to claim input tax. It is further alleged that payments made by the Applicant to suppliers by cross-cheques was a ruse inasmuch as after those payments were credited to the bank accounts of the suppliers the amount was withdrawn in cash by the employees of the Applicant.

4. Heard the counsel for the Applicant, the learned Special Prosecutor and the Assistant Attorney General, and perused the record.

¹ Defined in section 2(37) of the Sales Tax Act, 1990.

5. Though it is alleged that substantial purchases were made by the Applicant from suppliers whose sales tax registration was suspended or who were blacklisted, the investigation does not disclose whether such purchases were before or after such persons were suspended/blacklisted. Therefore, there is force in the submission of the Applicant's counsel that the department would not have approved a refund to the Applicant if the suppliers were appearing as suspended or blacklisted on the system.²

6. On the one hand it is alleged by the I.O. that certain suppliers of the Applicant are non-existent entities, and on the other hand it is acknowledged in the interim challan that the e-portal of the FBR reflects such suppliers as operative taxpayers. In such circumstances, the initial burden remains on the prosecution to show that persons appearing on the system as operative tax payers are in fact fictitious.

7. It is acknowledged in the interim challan that the Applicant has produced documents to demonstrate that Rs. 4.425 billion was paid to suppliers through banking channels, and that a substantial part of the record has yet to be received from the banks for verification. Therefore, the allegation that cross-cheques paid by the Applicant to his suppliers are a ruse, that too is yet to be substantiated.

8. The allegation that the input tax was claimed on fake and flying invoices necessarily requires an investigation into the suppliers who allegedly issued them. Admittedly, as per para-17 of the interim challan, the role of such suppliers is still under scrutiny. Learned prosecutor was unable to say whether any enquiry or audit had been initiated by the Additional Commissioner-IR under section 10(3) of the Sales Tax Act into the input tax refund claimed by the Applicant. Also, as regards the refund already made, this Court has not been shown any post-sanction audit under Rule 36 of the Sales Tax Rules nor proceedings against the Applicant under sub-sections (3) or (4) of

² Rules 12(a)(v) and 12(b)(ii) of the Sales Tax Rules, 2006.

section 11 of the Sales Tax Act to recover the sales tax erroneously refunded. In such circumstances, the reliance placed by the prosecution on the extra-judicial statement obtained from the Applicant is of no help at this stage.

9. Admittedly, the Applicant is running a towel manufacturing factory, and though it is alleged by the I.O. that the manufacturing capacity of such factory does not commensurate with the exports declared, this is not a case where it can be said that the Applicant is doing no real business.

10. In the totality of the aforesaid circumstances, the case against the Applicant is one of further inquiry falling within the ambit of sub-section (2) of section 497 CrPC.

11. Of the offences alleged, only the offences punishable under clause 5, 11c and 13 of section 33 of the Sales Tax Act fall within the jurisdiction of Special Judge (Customs, Taxation and Anti-Smuggling). It is not alleged that the Applicant has failed to deposit tax despite notice by an officer of Inland Revenue so as to trigger the offence under clause 5. The punishment of imprisonment under clauses 11 and 13 may or may not follow in addition to fine. In any case, none of the offences alleged fall within the prohibitory clause of section 497 CrPC.

12. Learned prosecutor submits that bail should nonetheless be denied as tax fraud being a white collar crime is essentially a crime against society and thus an exception to the rule of bail. However, as pointed out by learned counsel for the Applicant, such an argument in a similar case did not find favor with a learned Division Bench of this Court in *Ali Shan v. Directorate of Intelligence & Investigation (IRS)* (2017 PCr.LJ Note 189), where it was observed that the scheme of the Sales Tax Act, 1990 is primarily to effect recovery of tax, and therefore it cannot be said that all white collar crimes are crimes against the society.

13. Though the final challan has yet to be submitted as other persons accused have yet to be apprehended, the custody of the Applicant at least is no longer required for investigation. The evidence is documentary and in the custody of the prosecution and thus there is no likelihood of its tampering by the Applicant if released on bail. It is also not alleged that the Applicant is a flight risk.

14. For the foregoing reasons, the Applicant Muzamil Akbar Moten is granted post-arrest bail in FIR No. 01/2024 subject to furnishing solvent surety in the sum of Rs. 1,000,000/- (Rupees One Million only) along with 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.

JUDGE

*PA/SADAM