

THE HIGH COURT OF SINDH KARACHI

Spl. Criminal Bail Application No. 168 of 2024

For hearing of Bail Application.

Applicant/ Accused : Muhammad Ahmed Ilyas son of Muhammad Ilyas through Mr. Aamir Mansoob Qureshi, Advocate.

Complainant/State : Through Mr. Ashiq Ali Anwar Rana, Special Prosecutor Customs alongwith the I.O. namely; Shozab Iqbal, who is present in Court.

Date of hearing : 06-01-2025

Date of order : 06-01-2025

*FIR No.DEC-3617/24/DEP/JIAP
U/s: 2(s), 16 and 139(3) of the Customs Act, 1969
Punishable under sub-clause 70(d) of S. 156(1) of the Act ibid
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 rejected by the Special Judge (Customs, Taxation & Anti-Smuggling-I) Karachi by order dated 27-11-2024.

2. Per the FIR, lodged on 09.11.2024 at 08:30 a.m., the Applicant was intercepted on 08.11.2024 at 8:45 p.m. at the departure hall of Jinnah International Airport, Karachi, where he had arrived to travel to Dubai, and when AED 225,000/- (equal to USD 61,257/-) was found in two pouches in his hand-bag, not declared by him at the Customs declaration counter, and which was far in excess of the limit of US\$ 5000/ fixed for taking foreign currency out of Pakistan by an adult by Notification No.F.E.2/2022-SB dated 08-11-2022 issued under section 8 of the Foreign Exchange Regulation Act, 1947. It is alleged that such act of the Applicant constituted the offence of smuggling, as defined in section 2(s) of the Customs Act, 1969, punishable under clause 70(ii)(d) of section 156(1) of said Act.

3. Learned counsel for the Applicant submits that he was carrying said foreign currency as he and his family carry on business at Dubai; that such currency had been lawfully purchased from local money changers; that admittedly, the currency was not concealed by him; that the Applicant intended to declare the same at the Customs declaration counter but he was stopped and detained by the ASF before he could do so. He submits that the FIR acknowledges that the foreign currency was in fact seized by the ASF, and later on handed-over to the Customs, which was contrary to the prescribed procedure.

4. On the other hand, learned Special Prosecutor Customs submits that the Applicant was a frequent traveller, and therefore he was aware of the limit of foreign currency one could carry abroad; that he made no attempt to declare the foreign currency being carried by him, and thus it was apparent that he was trying to smuggle the same out of Pakistan.

5. Heard the learned counsel and perused the record.

6. Apparently, the foreign currency was not recovered from any secret cavity of the hand-bag carried by the Applicant. The documents relied upon by the Applicant suggest that his family has business at Dubai and that he regularly purchases AED from money-changers at Karachi. It is also not alleged that he was acting as a carrier for profit for others.

7. Though it is contended by the Special Prosecutor that the Applicant did not declare the excess foreign currency at the Customs counter, from the FIR it appears that he was stopped and detained by the ASF right after the initial baggage scan and before he could reach the Customs declaration counter. In such circumstances, the submission that the Applicant intended to declare the foreign currency carried by him, cannot be ruled out at this stage. Coupled with the fact that the foreign currency was not 'concealed' in baggage within the meaning of section 139(3) of the Customs Act, it has yet to be ascertained whether the intention was to smuggle or was it merely

a case of breach of Baggage Rules as observed by the Supreme Court in *Mirza Farhan Ahmed versus State* (2009 SCMR 304). Therefore, the case against the Applicant calls for a further inquiry into his guilt, falling within the ambit of sub-section (2) of section 497 Cr.P.C.

8. The punishment of imprisonment prescribed by clause 70(ii)(d) of section 156(1) of the Customs Act does not exceed 7 years, and therefore the case does not fall within the prohibitory clause of section 497 Cr.P.C.

9. The Applicant does not have a criminal record, nor does he appear to be a flight risk. Thus, to keep him incarcerated during trial does not serve any purpose, nor can that be done by way of punishment at this stage.

10. For the foregoing reasons, the Applicant Muhammad Ahmed Ilyas is granted bail in the aforesaid FIR subject to furnishing solvent surety in the sum of **Rs. 1,000,000/- [Rupees One Million only]** alongwith P.R. Bond in like amount to the satisfaction of the trial Court.

Needless to state that observations herein are tentative and nothing herein shall be construed to prejudice the case of either side at trial.

SHABAN*

JUDGE