

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT: MR. JUSTICE SALAHUDDIN PANHWAR

SPL. CR. BAIL APPLICATION NO.18/2015

Applicant : Jawad Ghaffar son of Abdul Ghaffar,
through Mr. Sohail Muzaffar, advocate.

Respondent : The State,
Through Mr. Kashif Nazeer, advocate for FBR.
Mr. Muhammad Jawed K.K., Standing Counsel.

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SPL. CR. BAIL APPLICATION NO.34/2015

Applicant : Shahid Khatri s/o Yousuf Khatri,
through Mr. Shaukat Ali Shehroze advocate.

Respondent : The State,
Through Mr. Kashif Nazeer, advocate for FBR.
Mr. Muhammad Jawed K.K., Standing Counsel.

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Date of hearing : 18.05.2015.

Date of announcement : 25.05.2015.

ORDER

This order will dispose of Special Cr. Bail Applications wherein applicants seek post arrest bail in crime No.Appg-31/DCI/Div-I/FIR/2014 under section 156(1)(8)(14), (45), (86) and (89) of the Customs Act, 1969.

The facts in brief are that complainant/Intelligence Officer, D.G, Intelligence & Investigation, FBR, has lodged FIR on 02.07.2014 at 2000 hours alleging therein that a credible information was received in the Directorate to the effect that M/s. A-Z Corporation with active connivance of its other associates is involved

in smuggling of contraband goods (beer/liquor) by mis-declaring its description, value and classification under the garb of import of test liner recycle liner paper in rolls (brown); the course was identified as one of such consignment containing grossly mis-declared goods/stuff in 1x40 feet container NO.BAXU-5006745 imported vide IGMNo.KAPE225/2014 dated 22.6.2014, index No.283 under bill of lading No.BAXSSS042797 dated 26.6.2014 lying at PICT East Wharf Karachi; the staff of Directorate General had blocked the system of online in pursuance of aforesaid information on 30.6.2014 in respect of above said container which was imported by M/s. A-Z Corporation (NTN No.3234257) and during the course of preliminary investigation it revealed that importer M/s. A-Z Corporation, Karachi had filed the online goods declaration machine No.KAPE-HC118346 dated 26.6.2014 under sub-clause (b) of sub-section 1 of section 79 of the Customs Act, 1969 and in the WEBOC system to Muhammad Jawaid of M/s. A-Z Corporation had processed the documentation to clear the consignment available in the container by submitting the challan No.2629 Karachi, wherein, it was declared as self assessed tax liability on the aforesaid declared description of the consignment and the declared description was confirmed by examinational staff of Customs authorities who were having the posting at PICT Karachi and it was assessed accordingly by the appraising staff of the Custom authorities of MCC appraisalment (East Karachi). The complainant in order to confirm the veracity of information and prior to re-examination of the consignment, the weighment of the container was carried out at PICT weigh bridge, Karachi, in presence of two witnesses, Yard Supervisor and Yard Checker, PICT East Wharf, Karachi, the above said container was re-examined by complainant and large number of bottles of whisky/alcohol debrides of assaulted

brands which were concealed inside 18 rolls of test liner re-cycle liner paper including black label 2699 bottles, red label 791 bottles while and mac 272 bottles cattos 66 bottles vatka 181 bottles cordier 260 bottles beer callsberg 293 cases of 6816 canes and the recovered goods/liquor were ceased items in terms of section 168(1) of the Customs Act 1969 and accused persons have violated the specific provisions of law as envisaged in sections 2(s)16, 32(1), (2), 79(1), 178 and 192 of the Customs Act 1969, punishable under clauses (8), (9), (14), (45), (86) and (89) of section 156(1) read with section 3(1)(3) of the Import and Export Control Act, 1959, section 3 and 6(1), 33, 34 and 36 of Sales Tax Act, 1990 and section 148(1) of the Income Tax Ordinance, 2001.

2 Learned counsel for applicants vehemently contended that name of accused does not transpire from FIR; applicant/accused Jawad Ghaffar has only been implicated by co-accused Shahid Khatri which is very weak type of evidence; there is no direct evidence involving the applicant in present crime; case is of further enquiry, hence applicant is entitled for bail. Learned counsel for applicant Jawad Ghaffar added that said applicant has the warehouse which was rented out by him to some person and he has no connection with the commission of crime so alleged by the prosecution and he has been involved with malafide intentions.

2. Learned Standing Counsel opposed the bail contending that more than 4000 bottles of liquor imported in the holy month of Ramadan, were seized which were transported through trailer and during the course of thorough investigation conducted sufficient material against the applicants/accused surfaced which well implicates the applicants in the crime; under special law it is the accused to prove himself to be not guilty by producing concrete

evidence which is missing in present case; therefore no case is made out for grant of bail. He has relied upon PTCL 1998 CL-354, PLD 1997 Supreme Court 545 and PTCL 2007 CL-400.

3. Heard learned counsel for applicants as well learned counsel for FBR and Standing Counsel, gone through the record

4. Record shows that it is not an offence of evading the duty or charges but it involves recovery of whisky / alcohol beverage in large number which stock was attempted to smuggle in the trailer. It should always be kept in mind that offence of smuggling whisky/alcohol or contraband articles are not to be viewed as ordinary offence (s) but such offence (s) always fall within meaning of offence (s) against society. The record shows that present applicants/ accused were not named in the first information report but their name (s) came to surface during the course of investigation. The applicants/ accused have not pleaded any specific malafide or substance to justify their false involvement by the agency. The record rather shows that applicants / accused were found involved in disposal of such smuggled whisky/alcohol by instructing stocking of such smuggled articles at godowns of Karachi and Lahore. The investigation also brought active involvement of the applicants / accused as they *prima facie* were found arranging and providing vehicle Shehzore mini Truck NO.KQ-8009 so as transport the rolls inside and outside Karachi beneath which the whisky / alcohol was hidden. To *prima facie* strengthen this, the prosecution also secured 14 gate passes of mini truck which made the delivery of such rolls evident. The records further shows that the transportation charges of the consignment from godown to outside Karachi were used to be paid by the present accused. It is also evident from the record that the present accused had also filed Constitutional petition No.D-

2319/2014 before this Court on the ground that he has no involvement in the commission of the present offence but the said petition was dismissed as not pressed therefore the present accused was arrested on 03.03.2015. During the course of investigation the present accused persons' mobile phone data was collected from M/s. Warid Pakistan and M/s. Telenor Pakistan which shows that present accused had repeatedly contacted with Shahid Khatri, Muhammad Zubair, Abdul Dawood and Abdul Jabbar who all are the racketeers of the present case; the accused frequently used to visit Lahore in connection with delivery of liquor; used to stay at Smart Hotel Liberty Market Lahore and such record of stay of present accused at Lahore is also collected by the prosecution. The papers further indicate that present accused also maintain account(s) in NIB Bank, Khalid Bin Waleed Road, Karachi, and Faisal Bank, Shaheed-e-Millat Road, Kaachi through which they used to make payment to absconding accused Rashid Iqbal in cash and online payment and even have received payment from Lahore in the said bank account. It is also an admitted position that present accused is also running showroom at Khalid Bin Waleed Road Kachi. It is also evident from his statement of account that the absconding accused Abid Ali had transferred billions of rupees in the account of present accused in NIB Bank, Khalid Bin Waleed Road Branch, Karachi, and Faysal Bank Shaheed-e-Millar Road, Karachi. The accused has also during the course of investigation admitted his accounts as well as his showroom and contact with the absconding accused from his mobile phone. Through such evidence the prosecution has *prima facie* linked the applicants / accused with commission of the offence and since no malafide is appearing against the investigating officer or agency nor the applicants / accused have succeeded in bringing any plausible plea

to cause dent in such material, linking a chain against the present applicants / accused. Worth to keep in mind that burden was / is upon the applicants / accused to *prima facie* establish their innocence even at the stage of bail. The bail application filed by co-accused Muhammad Javed and accused Shahid Khatri have also been rejected vide order of the Special Judge Customs and Taxation, dated 18.07.2014 and case of present accused in any way is distinguishable from the circumstances of the present case who has been refused bail by the Court of Special Judge Customs and Taxation after tentative assessment of evidence on record. I am of the clear view that the present applicants / accused have not been successful in making out a case for bail. Needless to add that bail granted to accused Muhammad Javed, being on medical ground, was/is of no help for applicants/accused to advance their case for bail. Accordingly, the applicants/accused are not entitled for concession of bail in a case involving huge quantity of whisky/alcohol rather a racket involved in holding money in their hands at the cost of society. Their bail plea (s) are accordingly rejected.

Imran/PA

J U D G E