

THE HIGH COURT OF SINDH KARACHI

Spl. Cr. Bail Application No. 85 of 2024

[Mohibullah & others v. the State]

Applicants/ Accused : i. Mohibullah son of Muhammad Islam.
ii. Muhammad Khan son of Noorullah.
iii. Muhammad Aijaz son of Nazar Ali Khan.
Through M/s. Waqas Ali Chaudhry and Muhammad Noman Sheikh, Advocates.

The State : Through Mr. Zulfiqar Ali Arain, Special Prosecutor (I&I) Customs.

Date of hearing : 30-09-2024

Date of order : 30-09-2024

*FIR No. 192(1)/DCI/I&I-Hyd/Zeiz-FIR/2023-24/1650
U/S: 2(s), 16, 157(2) and 178 of the Customs Act, 1969
r/w section 3(1) of the Import & Export (Control) Act,
1950 and Section 3&6 of Sales Tax Act, 1990
Further r/w SRO 499(1)/2009 dated 13.06.2005 &
Serial 5 of Appendix-A of Import Policy Order, 2020
Dated 05.09.2020, punishable under clause (i) and (89)
of Section 156(1) of the Act Ibid.
PS. Directorate of I&I Customs, Hyderabad*

ORDER

Adnan Iqbal Chaudhry J. - The Applicants seek post-arrest bail in the aforesaid crime after the same has been declined by the Special Judge (Customs, Taxation & Anti-Smuggling-I), Karachi by order dated 30-07-2024.

2. The FIR lodged by the Intelligence Officer of the D.G. I&I (Customs) on 06.06.2024 alleged that the Applicants were arrested respectively as the driver, cleaner and co-driver of a trailer container travelling from Lahore to Mirpurkhas, searched to discover the following:

- “i. Foreign origin / counterfeit cigarettes. Brand Capstan, 200,000 sticks in 20 cartons, value Rs.4,220,817/-.*
- ii. Foreign origin / counterfeit cigarettes. Branch President, 1,030,000 sticks in 103 cartons, value Rs.19,555,229/-.*
- iii. Foreign origin Betel Nuts, 1094 Kgs in 23 cartons, value Rs.1,612,018/-.*
- iv. Foreign origin Betel Nuts (Sweetened), 794.88 KGs, in 529,920 Sachet packed in 46 cartons, value Rs.1,621,747/-.”*

The above items were seized along with assorted auto-parts and old & new engines. The Applicants were booked for the offence of smuggling, defined in section 2(s) of the Customs Act, 1969 punishable under clause 89(i) of section 156(1) of said Act.

3. Heard learned counsel and perused the record.

4. Admittedly, the brand of ‘Capstan’ cigarettes, seized carried a track and trace mark on the packets, which is peculiar to local cigarettes. Though it is alleged that such marks were counterfeit, that is question for evidence at the trial.

5. As regards cigarettes of the brand ‘President’, it is alleged that those were smuggled inasmuch as those did not carry any track and trace mark on the packets. But that by itself does not indicate that the cigarettes may be smuggled. Those may well have been manufactured in Pakistan with a counterfeit packet; again a question requiring evidence.

6. As regards the seized betel nuts, the challan does not mention the country of origin, nor photographs of the packets to demonstrate smuggling into Pakistan from a foreign country.

7. It is alleged that the cigarettes and betel nuts were delivered to the Applicants by the Manager of Noman Cargo Service; however, that person has yet to be investigated.

8. In view of the foregoing, the case against the Applicants is one of further inquiry into their guilt falling within the ambit of sub-section (2) of Section 497 Cr.P.C. The offence alleged does not fall within the prohibitory clause of section 497 Cr.P.C. The custody of the Applicants is no longer required for investigation.

9. In view of the foregoing, the Applicants are granted bail in the aforesaid FIR subject to furnishing solvent surety in the sum of Rs. 100,000/- (Rupees One Hundred Thousand) each alongwith P.R. Bond in like amount to the satisfaction of the trial court.

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

PA/SADAM

JUDGE