

IN THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Bail Application 117 of 2024

Amir Saeed

vs.

The State

For the Applicant / Accused : Mr. Qazi Umair Ali
Advocate

For the Prosecution / State : Ms. Alizeh Bashir
Assistant Attorney General

Mr. Naimatullah Soomro
Special Prosecutor
Customs

Date of hearing : 22.10.2024

Date of announcement : 22.10.2024

ORDER

Agha Faisal, J. The applicant seeks post-arrest bail, in respect of F.I.R. 05 of 2024, registered on 14.09.2024 before P.S. Collectorate of Customs (Appraisement West), Karachi, pertaining to offence/s under Section/s 16, 32(1), 32(2) and 79(1) of the Customs Act, 1969, read with section 3 (1) of the Imports & Exports (Control) Act, 1950 read with S.N.369 of Appendix-B, Part-IV of Import Policy Order, 2022, Section 33 of the Sales Tax Act, 1990 and Section 148 of the Income Tax Ordinance, 2001, punishable under clauses 1, 9, 14 and 45 of Section 156(1) of the Act *ibid*.

2. Learned counsel submits that the earlier plea for bail by the applicant was rejected by the Court of the Special Judge, (Customs, Taxation & Anti-Smuggling-I) Karachi in Cr. Bail Application filed in FIR No.05 of 2024, hence, the present proceedings.

3. After considering the submissions of the learned counsel and sifting¹ through the material placed before the court, for and against the applicant, reproduction whereof is eschewed herein², it is observed as follows:

a. The allegation levelled against the applicant was that he *caused* a revenue loss to the exchequer, to the tune of Rs. 1.425 Million, essentially by mis-declaring an HS code on an import consignment.

¹ *Shoaib Mahmood Butt vs. Iftikhar Ul Haq & Others* reported as 1996 SCMR 1845.

² *Chairman NAB vs. Mian Muhammad Nawaz Sharif & Others* reported as PLD 2019 Supreme Court 445; *Muhammad Shakeel vs. The State & Others* reported as PLD 2014 Supreme Court 458.

- b. Learned counsel for the applicant pleaded entitlement to the concession of bail on the premise that no loss was occasioned to the exchequer; clearance took place on the assessed value post sample testing having been precipitated by the department itself; FIR was registered more than 47 days later; investigation is completed and there is no further reason to keep the applicant incarcerated.

The Special Prosecutor Customs asserted that the applicant was not eligible for the relief sought as the matter befell in the prohibitory clause. He made no attempt to dispel the assertions articulated on behalf of the applicant and despite repeated query did not substantiate the loss having been occasioned.

- c. The record speaks that the GD was filed on 29.07.2024 and the consignment was subjected to a sample test. The assessment was done on the basis of the sample received and at the HS code carrying an incremental incidence of duties / taxes. The assessed amount was paid by the applicant and the consignment was released thereafter. No show cause appears to have been issued and no hearing provided, however, the FIR was registered and the applicant arrested more than a month and a half later.
- d. It is apparent that there has been no adjudication of loss, however, notwithstanding the same since the incremental duties / taxes have already been paid, at the onset, the Special Prosecutor failed to articulate as to how any loss had been occasioned.
- e. Learned Special Prosecutor advanced a tangient argument regarding a valuation ruling, however, failed to dispel the preponderant absence of any such stipulation in the FIR, challan etc.
- f. It was argued that an additional penal provision was added to the FIR to befall the consideration of bail in the prohibited category. Applicant's learned counsel relied on the Supreme Court edict in *Saeed Ahmed*³ to demonstrate that such an action does not disentitle an applicant from the concession of bail, if the same is made out otherwise.
- g. Upon tentative⁴ assessment of the material⁵ collected by the prosecution, for and against the applicant, it is manifest that the case, pertaining to the involvement of the applicant / accused in commission of the alleged offence, merits further enquiry⁶, hence, demonstrably qualifying the present matter within the remit of Section 497(2) Cr.P.C. The Supreme Court has maintained that in matters requiring further enquiry, grant of bail is the rule rather than the exception⁷.

³ *Per Saleem Akhtar J in Saeed Ahmed vs. The State* reported as 1996 SCMR 1132.

⁴ *Shahzaman vs. The State* reported as PLD 1994 Supreme Court 65.

⁵ *Asif Ayub vs. The State* reported as 2010 SCMR 1735.

⁶ *Awal Khan & Others vs. The State* reported as 2017 SCMR 538.

⁷ *Muhammad Shafi vs. The State* reported as 2016 SCMR 1593; *Nisar Ahmed vs. The State* reported as 2014 SCMR 27.

h. It is also observed that the present case does not fall within the ambit of exceptions⁸ illumined in the *Tariq Bashir case*⁹. The material placed before the Court does not indicate any criminal record of the applicant, in cases of an identical nature or otherwise; no argument has been articulated requiring the applicant's presence for further investigation at this stage or denoting him as a flight risk; no apprehension has been expressed with regard to tampering of evidence by the applicant or repeating the offence/s, if enlarged on bail; hence, no cause is apparent presently warranting the continued incarceration of the applicant *pendente lite*.

4. Therefore, it is the assessment of this Court that the learned counsel for the applicant has made out a fit case for grant of post arrest bail, hence, the applicant is hereby admitted to bail, subject to furnishing solvent surety in the sum of Rs. 100,000/- (Rupees One Hundred Thousand only) and a personal recognizance bond, in the like amount, to the satisfaction of the learned trial Court.

5. It is considered pertinent to record that the observations herein are of tentative nature and shall not influence and / or prejudice the case of either party at trial.

JUDGE

⁸ *Zafar Iqbal vs. Muhammad Anwar & Others* reported as 2009 SCMR 1488; *Subhan Khan vs. The State* reported as 2002 SCMR 1797.

⁹ *Tariq Bashir & Others vs. The State* reported as PLD 1995 Supreme Court 34.