

IN THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Bail Application 113 of 2024

Shafqat Samuel Masih

vs.

The State

For the Applicant / Accused : Mr. Irfan Hassan Ansari,
Advocate

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

Mr. Naimatullah Soomro
Special Prosecutor Customs

Date of hearing : 23.10.2024

Date of announcement : 23.10.2024

ORDER

Agha Faisal, J. The applicant seeks post-arrest bail, in respect of F.I.R. P.4042/JIAP, registered on 31.08.2024 before Collectorate of Customs, Jinnah International Airport, Karachi, pertaining to offence/s under Section/s 2(S), 16, 17, 139, 178, 187 of the Customs Act, 1969, punishable under sub clause (d) (i) of clauses (8), (70) and (89) of Section 156(1), read with 2(b), 16 of the Baggage Rules, 2006, further read with Condition provided at Sr. No.59 of Appendix-B of Import Policy Order, 2016.

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 Case No.173 of 2024 vide order dated 23.09.2024, 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 leveled against the applicant was that he is facilitating smuggling of mobile phones and electronic devices; while working for a private company at Karachi Airport.
- b. Learned counsel argued that the applicant is employee of Gerry's Dnata and is responsible for involved handling at Karachi Airport. It is stated that his job description is to assist passengers to locate lost luggage. It is submitted that he was arrested on the

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.

pretext of facilitation of smuggling, however, he has no nexus therewith; no private witness has been demonstrated thus far to corroborate the allegation there against; electronic devices mentioned in title of FIR and body of FIR and challan are inconsistent; no nexus of the applicant is demonstrated with the main accused / smuggler; interim challan itself states that credible information has been sought by the prosecution and replied from the respective authority still awaited. It is thus pleaded that the applicant may be enlarged on bail.

- c. The learned Special Prosecutor Customs opposes the grant of bail and states that the applicant is not eligible for the relief sought as mobile phones fall within SRO 566(I)/2005, therefore, within ambit of smuggling. He was queried as to whether investigation has been completed and replied in the affirmative and added that final challan shall be submitted shortly. He was queried as to whether matter fell within the non-prohibitory clause and he replied in affirmative.
- d. The description of the recovered items does appear to be mutually inconsistent in the successive instruments. The nexus, if any, of the applicant with the main accused remains to be elaborated. The interim challan categorically records that information sought from the concerned authority, material hereto, remain outstanding. It is also the prosecution's case that the applicant is no longer required for investigation.
- e. The alleged offence *admittedly* does not fall within the prohibitory clause and it is settled law in such matters the grant of bail is the rule³ and its refusal an exception⁴. The Supreme Court has illumined⁵ that in such cases Courts may consider favorably the granting of bail and decline to do so only in exceptional cases. The prosecution has made no endeavor to suggest that any exception is attracted in the present matter.
- f. Upon tentative⁶ assessment of the material⁷ 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 enquiry⁸, 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 exception⁹.
- g. It is also observed that the present case does not fall within the ambit of exceptions¹⁰ illumined in the *Tariq Bashir case*¹¹. The material placed before the Court does not indicate any criminal record of the applicant, in cases of an identical nature or

³ *Muhammad Tanveer vs. The State & Another* reported as PLD 2017 SC 733.

⁴ *Tariq Bashir & Others vs. The State* reported as PLD 1995 Supreme Court 34.

⁵ *Zafar Iqbal vs. Muhammad Anwar & Others* reported as 2009 SCMR 1488.

⁶ *Shahzaman vs. The State* reported as PLD 1994 Supreme Court 65.

⁷ *Asif Ayub vs. The State* reported as 2010 SCMR 1735.

⁸ *Awal Khan & Others vs. The State* reported as 2017 SCMR 538.

⁹ *Muhammad Shafi vs. The State* reported as 2016 SCMR 1593; *Nisar Ahmed vs. The State* reported as 2014 SCMR 27.

¹⁰ *Zafar Iqbal vs. Muhammad Anwar & Others* reported as 2009 SCMR 1488; *Subhan Khan vs. The State* reported as 2002 SCMR 1797.

¹¹ *Tariq Bashir & Others vs. The State* reported as PLD 1995 Supreme Court 34.

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 Lac 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