

IN THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Bail Application 123 of 2024

Muhammad Zubair

vs.

The State

For the Applicant / Accused : Messrs. Rehan Kayani and
Syed Naveed Wasti Advocates

For the Prosecution / State : Ms. Sara Malkani
Assistant Attorney General
Mr. Tariq Nadeem Durrani, I.O.

Date of hearing : 01.11.2024

Date of announcement : 01.11.2024

ORDER

Agha Faisal, J. The applicant seeks post-arrest bail, in respect of F.I.R. No.3 of 2024, registered on 20.05.2024, before Directorate of Intelligence and Investigation (Inland Revenue) Hyderabad, pertaining to offence/s under Section/s 2(9), 2(37), 3, 6, 7, 8, 11, 22, 23, 26, 73, 33(11), 33(13) & 37A Sales Tax Act.

2. Learned counsel submits that the earlier pleas for bail by the applicant was rejected by the Court of the Special Judge (Customs, Taxation and Anti-Smuggling-I), Karachi in Case No. 101 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 matter pertains to allegations of fake / flying invoices in respect of sales tax. *Admittedly*, the applicant is not named in the FIR, hence, there is no question of any role being assigned thereto. The applicant is also alien to the interim challan filed. A person called Fahad was named in the FIR, however, he has been since discharged. On his pointing, Mohsin was implicated in the interim challan. On Mohsin's implication the applicant has been arrested.
- b. The I.O. states that the applicant has been named as next of kin in a bank account opened by Mohsin and is also responsible for having introduced Mohsin to the said branch. The overarching

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.

allegation, albeit alien to the FIR and interim challan, is that the applicant is also involved in the fake / flying invoices matter.

- c. Learned counsel for the applicant pleaded entitlement to the concession of bail on the premise that name of the applicant is not mentioned in the FIR; his name does not appear in the interim challan; and the only allegation there against is by an under trial accused. It is argued that in the absence of any case having been crystalized by the prosecution against the applicant, no case is made out to sustain his incarceration.

The IO asserted that the applicant was not eligible for the relief sought as there are others implicated in the matter and the release of the applicant will adversely impact on the case.

- d. It is admitted that the investigation in respect of the applicant has already been concluded and the same is apparent from page 122 of the court file. The name of the applicant is missing from the FIR and the challan filed thus far. The prosecution is yet to present any instrument in court implicating the applicant.
- 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. No exception has been demonstrated 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/s, 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. In addition to the foregoing, 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 stage¹⁰ 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 bail¹¹; hence, no cause is apparent presently warranting the continued incarceration of the applicant *pendente lite*.

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 *Riaz Jafar Natiq vs. Muhammad Nadeem Dar & Others* reported as 2011 SCMR 1708.

¹¹ *Subhan Khan vs. The State* reported as 2002 SCMR 1797.

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