

THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Bail Appl. No. 86 of 2025

[Muhammad Uzair Ali v. The State]

Applicant : Muhammad Uzair Ali son of Abdul Saboor through M/s. Dil Khuram Shaheen and Shahenshah Amjad Hussain, Advocates.

Respondent : The State, through Mr. Ashiq Ali Anwar Rana, Advocate along with I.O. Saleem.

Mr. Muhammad Khalid Javed Raan, Deputy Attorney General for Pakistan.

Date of hearing : 09-05-2025

Date of decision : 09-05-2025

*FIR No. ASO-96/2025-(HQ)
U/s: 2(s), 16, 17, 178 and 187 of the Customs Act,
1969 punishable under clauses 8(d)(i), 89 and 90 of Section
156(1) and Section 157(2) of the Act ibid.
P.S. Collectorate of Customs Enforcement, ASO/HQ/, Karachi*

ORDER

Adnan Iqbal Chaudhry J. - The Applicant seeks 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 11-03-2025.

2. Heard learned counsel and perused the record.

3. The FIR is that on 18-02-2025 at 01:00 am the Customs team observed that a boat namely Al-Arashiya anchored at Gadani Shipbreaking Area, was discharging diesel via a pipeline to onshore storage tank; that a search of the boat revealed that some tanks on board were already emptied while others were still full of diesel; that the diesel was suspected to be smuggled into Pakistan, thus seized and all persons on the boat engaged in such activity were arrested for

the offence of smuggling, the Applicant as the captain of the boat, and the other four as his crew.

4. The learned trial Court granted bail to the four crew members (co-accused persons) but refused bail to the Applicant on the ground that as captain of the boat he fell within the definition of 'carrier' and 'person-in-charge' in section 2(ea) and section 2(q) of the Customs Act, 1969. But then, the offences under clauses 8(i) and 89(i) of section 156(1) of the Customs Act for which all accused persons were arrested is not confined only to a 'carrier' or a 'person-in-charge'. In other words, the role of the Applicant in the alleged offence of smuggling was not too different from the other accused persons who were granted bail by the trial Court. Therefore, is entitled to bail on the role of consistency.

5. The Applicant is not found to be the owner of the boat that was transporting the diesel, nor does he claim ownership of the diesel. The owner of the diesel has yet to be apprehended. In similar circumstances, in the case of Noorul vs. The State [1976 SCMR 190], the Supreme Court granted bail to the paid servants of the owner of the boat by observing that their role was not at *par* with the role of the owner who had yet to be brought to trial.

6. Yet another aspect of the matter is that the FIR did not expressly allege that the seized diesel was of Irani origin. Such allegation was made in the interim challan. While it is correct that the circumstances in which the Applicant was arrested suggested that he was transporting smuggled goods, the fact that the diesel of Irani origin has yet to be proved by way of chemical analysis and comparison with lawfully imported diesel. In other words, the case against the Applicant is of further enquiry into his guilt, falling within the ambit of sub-section (2) of section 497 CrPC.

7. The value assigned to the seized diesel is Rs. 7,462,482/- which would at best attract sub clause (c) of clause 8(i) of section 561(1) of

the Customs Act, thereto the maximum imprisonment prescribed does not exceed six (06) years. Therefore, the offence alleged against the Applicant does not fall within the prohibitory clause of section 497 CrPC. In such circumstances, bail becomes the rule and its refusal the exceptional.

8. In view of the foregoing, the Applicant Muhammad Uzair Ali son of Abdul Saboor is granted post-arrest bail in the aforesaid FIR subject to furnishing solvent surety in the sum of Rs. 500,000/- [Rupees Five Hundred Thousand only] alongwith P.R. Bond in like amount to the satisfaction of the trial Court.

Needless to state that the observations herein are tentative, and shall not be construed to prejudice the case of either side at trial.

JUDGE

Karachi
Dated: 09-05-2025
*SHABAN**