

THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Bail Application No. 92 of 2025

[Zia-ud-din v. The State]

Applicant : Zia-ud-din son of Alla-ud-din through Mr. Muhammad Jawad Mustafa, Advocate.

Respondent : The State, through Mr. Zulfiqar Ali Arain, Advocate.

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

Date of hearing : 15-05-2025

Date of decision : 15-05-2025

*FIR No. 03/2024-25
U/s: 2(s), 6 and 18 of the Customs Act, 1969
Punishable under clause (89) of Section 156(1)
And section 157(1)(2) of the Act ibid
P.S. Customs Office 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 25.03.2025.

2. Heard learned counsel and perused the record.

3. The FIR is that on 04.03.2025 at 08:45 p.m., a team of the Anti-Smuggling Unit-II, Larkana intercepted a convoy of one truck and three vans at Kashmore Toll Plaza, suspected to be transporting smuggled goods; that drivers of three of the vehicles managed to escape; whereas the Applicant was apprehended as driver of one van bearing registration No.BMB-100; that upon a search of the van, the goods that were recovered were (i) 50 cartons containing foreign-brand cigarettes estimated at Rs. 5,000,000/- (ii) 18 bags of betel nuts of foreign-origin estimated at Rs. 315,000/- and, (iii) 25 bags of Monosodium Glutamate (China Salt) marked as 'made in China', estimated at Rs. 625,000/-; therefore, said goods were seized and the Applicant was arrested for the offence of smuggling as defined in

section 2(s) of the Customs Act, 1969 and punishable under clause 89 of section 156(1) of said Act.

4. Though it is alleged that the seized betel nuts were of foreign-origin, the FIR does not mention the country of origin, nor does it reveal a packing descriptive of the country of origin. The seizure was also not made from any border area. The import of betel nuts into Pakistan is not prohibited under the Import Policy Order, rather it is subject to certain conditions and restrictions. It was observed by the Supreme Court in *Sikandar A. Karim v. The State* (1995 SCMR 387):

“If the items alleged to be smuggled by the prosecution were available freely in the open market and imports of such goods were not banned in the country, a presumption may arise that these goods were lawfully brought in the country unless contrary is shown.”

Therefore, it may well be that the seized betel nuts were lawfully imported and procured from the local market.

5. While Monosodium Glutamate, also known as Ajinomoto Salt, had been added to Appendix-A of the Import Policy Order as a banned item, it has yet to be included in the list of smuggled goods vide SRO No. 566(1)(2005) dated 06.06.2005 issued under section 2(s) of the Customs Act, 1969. Therefore, the offence of smuggling at least, as defined in section 2(s) of the Customs Act may not be attracted. Reliance can be placed on the cases of *Shabbir Ahmed Shah v. Pakistan* (1980 PCrLJ 349) and *Hiam Tabbara v. Director-General, Pakistan Coast Guards* (PLD 1980 Karachi 44).

6. As regards the seized cigarettes of foreign brands, those were discovered inside packed cartons. The FIR does not state that the cartons were marked with the brands. Therefore, the version of the Applicant that he was hired merely as a driver and given packed goods to deliver without knowledge of the contents, cannot be ruled out at this stage.

7. The offence under clause 89(i) of section 156(1) of the Customs Act, for which the Applicant was arrested, does not envisage imprisonment beyond a period of six (06) years. Therefore, such offence also does not fall within the prohibitory clause of section 497 Cr.P.C.

8. In view of the foregoing, the Applicant Zia-ud-din son of Alla-ud-din is granted post-arrest bail in the aforesaid FIR subject to furnishing solvent surety in the sum of Rs. 300,000/- [Rupees Three 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: 15-05-2025

*PA/SADAM