

115

IN THE HIGH COURT OF SINDH AT KARACHI

Before:

Mr.Ahmed Ali M.Shaikh

Mr.Mohammad Karim Khan Agha,JJ

SPL.CR.BAIL APPLICATION NO.70 OF 2016

Date of hearing: 03.10.2016
Date of order: 17.10.2016

Applicant: Muhammad Hussain
through Mr.G.M.Bhuto, Advocate

Respondent: State through Mr.Ashiq Ali Anwar Rana,
Special Prosecutor, Customs.

ORDER

Mohammed Karim Khan Agha J. By this Order we propose to dispose of the above mentioned application for post arrest bail filed by Muhammed Hussain (the applicant) under S.497 Cr.P.C. The applicant along with others has been indicted in Crime No.22-Exp/DCI/Div-IV/ISAF/2015, under Section (S).16.32(1),128 & 131, punishable under clause (8), (14),(45),(64),(68) &(69) of sub-section (1) of Section 156 read with Chapter VIII (Clearing Agents Licensing Rules) of the Customs Rules, 2001. The applicant first moved a bail application before the learned Judge Special Appellate Court (Customs & Taxation), Karachi which was dismissed vide order dated 19-10-15. Thereafter the applicant moved an application for post arrest bail before a single Judge of this Court which was dismissed vide order dated 10-02-2106. The applicant has now filed this application for post arrest bail before the Divisional bench of this Court.

2. The brief relevant facts of the case are that a credible information was received through reliable source in the Directorate of intelligence & Investigation-FBR, Regional Office, Karachi to the effect that Messrs

✓

116

Ports Connections (Pvt) Limited Bonded Carrier CHAL No.2968, Karachi and Messrs Saryal Cargo Channel Clearing Agency with the active connivance of others are involved in illegal and unauthorized pilferage/removal of bonded goods from the containers of various consignments of ISAF, meant for re-exportation from Mazar Sharif, Afghanistan to ISAF Germany, through Customs Station Torkham, Customs House, Peshawar via Port Muhammad Bin Qasim, Karachi, Pakistan. In order to verify the aforesaid information, 17x40 feet containers having intact seals affixed by the shipper and customs were examined by the staff of Directorate General on 02.4.2015 at Port Muhammad Bin Qasim, in presence of authorized representatives. During examination from 8x40 feet containers instead of "Batteries filled with Acid and Lamps" as declared in the Export Goods Declarations, huge quantity of Wooden Pallets, Sand Bags, Concrete Blocks and 01 Box Used Tube Lights were recovered and hence an FIR was lodged in respect of such offenses.

3. Learned counsel for the applicant submitted that the applicant is completely innocent and has falsely been implicated in the case, that his name has not been mentioned in the FIR and that no specific role in the alleged offense has been assigned to him, that no documentary evidence is against him and that the prosecution is relying solely on the statement of the accused and as such it was a case of further inquiry. That even the prosecution had failed to produce any evidence that the concerned trailer/Vehicle was registered in his name. He further submitted that the investigation has been completed, the challan has been submitted and that he was no longer required for investigation and that as the case is largely based on documentary evidence he cannot interfere with it, that the case was bailable and other similarly placed co-accused had been granted bail

✓

and hence based on all the above reasons including the rule of consistency he should also be granted post arrest bail.

4. On the other hand learned Special Prosecutor, Customs, opposed the bail application since in his view there was sufficient material to connect the applicant to the offense and the applicant has been charged for an offence carrying a sentence of up to 14 years imprisonment and as such the case of the applicant fell within prohibitory clause of Section 497(1) Cr.P.C and is not bailable.
5. We have considered the submissions of learned counsel for the parties and carefully pursued the record.
6. It is made clear that as per settled law the findings in this order are only of a tentative nature and will have no bearing on the outcome of the trial which will be decided by the trial Court on merits based on the evidence brought before it.
7. It appears that the applicant along with other co-accused is allegedly involved in the pilferage of certain items from containers meant for ISAF Germany, however, during investigation it appears that the IO could not collect evidence showing therein the modus operandi of the either the applicant or the co-accused. It appears that the seals of the containers were removed and goods were removed, however, the IO could not reach to the conclusion as to whether the goods were removed from Pak Afghan Border or at Port Muhammad Bin Qasim. This would tend to make the case one of further inquiry. Even other wise, the prosecution case is based on documentary evidence which cannot be interfered with by the applicant if released on bail. The investigation has been completed and final report submitted and as such the applicant is no more required for investigation purposes. The applicant is charged for an offence which is punishable

118

from five years to fourteen years and it is a settled principle of law that the Courts generally have to take into consideration minimum sentences while dealing with bail matters. Even otherwise since the role of the accused is similar in nature to some of the other co-accused who have already been granted post arrest bail by this Court, such as Muhammed Faraz by order dated 02-06-2016 in Special Cr.Bail Application No.37/2016, we find that the rule of consistency is applicable in this case and that, as such, the applicant has made out a case for post arrest bail.

8. Thus, by our short order dated 03-10-2016, we granted the applicant post arrest bail subject to him furnishing solvent surety in the sum of RS 500,000(five lacs) and PR bond in the like amount to the satisfaction of the Nazir of this Court.
9. The above discussion in this Order are the reasons for our short order.
10. However it is made clear that if the applicant or anyone acting on his behalf causes any delay in the proceedings of the trial the prosecution may apply for cancellation of the post arrest bail granted to the applicant through the short order.

Dated:17-10-2016