

IN THE HIGH COURT OF SINDH AT KARACHI

Spl. Criminal Bail Application No.16 / 2019

Applicant: **Muhammad Mohsin through Mr. Iftikhar Hussain
Advocate.**

Respondent: **The State through Mr. Ashiq Ali Anwar Rana
Special Prosecutor Customs.
Mr. Ch. Waseem Akhtar Assistant Attorney
General.**

Date of hearing: 03.06.2019.

Date of order: 03.06.2019.

ORDER

Muhammad Junaid Ghaffar, J. This bail application has been filed by the present Applicant seeking post arrest bail in FIR No. ST/Azmi Plastic Works/2018-19/01 registered under Section 2(37) and violation of Section 3, 6, 11, 26 of the Sales Tax Act, 1990 and Chapter X of Sales Tax Special Procedure Rules, 2007 read with Section 14 ibid, and punishable under clause (11) & (13) of the Section 33 along with default surcharge under Section 34 ibid at P.S. Directorate of Intelligence & Investigation (Inland Revenue) FBR, Hyderabad as the bail application filed before the Special Judge Customs and Taxation Karachi stands dismissed vide order dated 23.1.2019.

I have heard the learned Counsel for the Applicant as well as the Special Prosecutor and my observations are as under:-

- a) The precise case of the prosecution is to the effect that the Applicant being proprietor of M/s Azmi Plastic Works was registered as a manufacturer / importer of plastic products and after importing raw material was involved in

selling the same in open market without any manufacturing process. This allegation is based on some visit to the given address of the Applicant; however, the case of the Applicant is that with advance information the Applicant had already moved its manufacturing unit from the old address to a new address on Plot No. 3, Survey No. 73, Government Hospital Road, Noorani Basti, Ahsanabad, Opp. People Wali Hotel, Hyderabad and this was duly notified to the Department through a modification form filed with them through their web-portal. Such assertion of fact on behalf of the Applicant at least requires an inquiry to the effect that whether the process was duly followed or not.

- b) It also appears to be an admitted position that before granting registration and status of Sales Tax as a manufacturer, the Department is required to verify the manufacturing facilities and issue a Sales Tax Registration accordingly. There is no dispute to the effect that this was done prior to issuance of the Sales Tax Certificate and on the basis of this, the consignments were imported and were duly released by the Customs Authorities by granting exemption available to a manufacturer. It is not clear as if there was any wrong doing on the part of the Applicant, why the status of the Applicant was not altered and no advance information was forwarded to the Customs Authorities. It is also not clear as to what action was taken against the Departmental Authorities who had verified the status of the Applicant as being a manufacturer. This also needs to be probed through further inquiry.
- c) It is also an admitted position that in these matters the adjudication proceedings for determination of the alleged short payment of Sales Tax, and criminal proceedings go together. However, while confronted the Special Prosecutor was not in a position to inform the Court as to what

happened in the adjudication proceedings as it is the case of the Department that an amount of Rs.22.0 million is short paid; but till date it appears that not even a Show Cause Notice has been issued to the Applicant. In view of these circumstances, it appears to be a case of further inquiry so as to determine the alleged amount outstanding against the Applicant and despite registration of FIR on 03.10.2018 the Applicant has not been confronted with any Show Cause Notice in terms of Section 11 of the Sales Tax Act, 1990.

- d) It is also an admitted position that in like cases the learned trial Court has been consistently granting post arrest bail to accused on their furnishing Pay Order / Postdated Cheque of the alleged due amount of Sales Tax. In this case, the Applicant has admittedly given various Postdated Cheques of Rs. 2,15,000/- each as well as Pay Order for Rs. 500,000/- to the Commissioner, Inland Revenue and the Department has accepted the same as per past practice, whereas, the Special Prosecutor along with the departmental representative concedes to such position.

In view of hereinabove discussion, the Applicant has made out a case for grant of post arrest bail and by means of a short order dated 03.06.2019 he was granted bail on furnishing surety in the sum of Rs. 200,000/- with P.R. Bond in the like amount to the satisfaction of the Nazir of this Court and these are the reasons in support thereof.

J U D G E

ARSHAD/