

IN THE HIGH COURT OF SINDH, KARACHI

Special Criminal Bail Application No. 15 of 2020

Muhammad Ishaq and another.....Applicant

Versus

The State.....Respondent

Special Criminal Bail Application No. 16 of 2020

Imran-ul-Rehman and others.....Applicant

Versus

The State.....Respondent

Date of Hearing and Short Order :- **13.04.2020**

Mr. Muhammad Nauman Jamali, advocate for applicant in BA 15/20

Mr. Muhammad Faisal Khan, advocate for applicant in BA 16/20

Mr. Khalid Mehmood Rajpar, Special Prosecutor (Customs)

ORDER

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**Fahim Ahmed Siddiqui, J:** Since the applicants in the instant two bail applications are involved in a criminal case based on the same F.I.R; therefore, this order will suffice for the disposal of both the bail application.

2. The applicants Muhammad Ishaq and Muhammad Yousuf (BA # 15/2020) and applicants Imran-ul-Rehman, Shahbaz Khan, Maaz-bin-Jawed, Muhammad Junaid and Syed Tariq Ali Shah (BA # 16/2020) are involved in a case initiated through F.I.R. No.ASO-80/2020 (HQ) punishable u/s 156(1), 156(8) and 156(89) of the Customs Act, 1969 lodged at PS Anti-smuggling Organization, HQ NMB Wharf, Karachi. Earlier to moving the instant bail applications, the applicants have made an effort to get themselves released on bail before the trial Court but their bail pleas were declined by the Trial Court through the impugned order.

3. After hearing the detailed arguments and perusal of the available records and going through the case laws relied upon, I have observed as under:

(a) It is alleged against the applicants within the body of F.I.R. that they were involved in the organized supply of smuggled HSD Oil amounting to Rs.2,81,84,000/- to the different vessels operating in the sea. Allegedly, the applicants were apprehended within the territorial waters of Pakistan from a barge through which the purported smuggled HSD Oil was supplied to the different vessels. It is alleged that the oil recovered from the barge belongs to M/S Byco Pakistan and the apprehended persons were either the employees of M/S Byco Pakistan or the crewmembers of the barge.

(b) The applicants Muhammad Ishaq and Muhammad Yousuf (B.A. No. 15/2020) are not the employees of Byco Pakistan but they are the employees of the owner of the barge, which was being used in the alleged offence.

(c) So far as the applicants Imran-ul-Rehman, Shahbaz Khan, Maaz-bin-Jawed, Muhammad Junaid, and Syed Tariq Ali Shah (B.A. No. 16/2020) are concerned, they belong to the contractor, who transport the oil of M/S Byco Pakistan to different destinations including vessels available within the waters of Pakistan.

(d) The incident is said to be taken place on 13-02-2020 at 09:00 a.m. while F.I.R. was lodged on 16-02-2020 at 05:00 p.m. wherein the applicants have been shown as arrested. As per F.I.R., the applicants were arrested from the barge at the time of the raid at about 09:00 a.m. on 12-02-2020 but the record is silent how the applicants were kept in custody till 16-02-2020 without lodging an F.I.R.

(e) It is alleged that the applicants are involved in smuggling/pilferage of HSD but from the record, it appears that the barge namely Wania-II has entered into the waters with a specified load after getting the required permission from different quarters including customs officials.

(f) It is also manifested from the record that the barge was chartered by M/S Zeeshan Oils for transportation of oil at a specified area i.e. SPM (Charna Island) and the said barge was apprehended from the very specified area, hence,

apparently the barge and the employee on board were performing their duties and if any act of smuggling is done by M/S Byco Pakistan, it cannot be said at this stage that the same was with conscious knowledge of the applicants.

(g) Although the GDs were recovered from the possession of applicants of BA No. 15/2020 and even if there is any allegation of malpractice by M/S Byco Pakistan regarding import or export of HSD Oil, the same needs to be established through adjudication, which has yet not been started and none of the M/S Byco Pakistan high-ups have been involved in the case.

(h) It appears that the applicants have been made scapegoats in this case by after-caring the senior management of M/S Byco Pakistan and this premise is reinvigorated from the unexplained delay in the lodgement of F.I.R.

4. Based on the above observation, I have no hesitation to declare that the applicants are entitled to bail. Hence, the applicants of both the aforementioned bail applications were admitted to bail subject to furnishing solvent surety of Rs.500,000/- each and PR bond in the like amount to the entire satisfaction of the trial Court through my short order dated 13-04-2020 and these are the reasons for the same.

5. Before parting, I would like to make it clear that if any of the applicants, after getting bail, remains absent from trial Court and if the trial Court is satisfied that the applicant has become absconder then the trial Court is fully competent to take every action against the said applicant/applicants and his/their surety or sureties including cancellation of bail without referring to this Court.

6. It is clarified that all of the above observations are purely tentative and will have no bearing upon the trial of the applicants and other co-accused.

**J U D G E**