

ORDER-SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Spl. CrI. Bail Application No. 79 of 2019

Date of hearing	Order with signature of Judge
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FOR HEARING OF BAIL APPLICATION

Obaid Jamshed	Applicant
	Versus	
The State	Respondent.

Date of short order: **22.08.2019**

Applicant Obaid Jamshed through Mr. Salman Raza Khan, advocate.

The State through Mr. Ashiq Ali Anwer Rana, Special Prosecutor (Customs).

ORDER

FAHIM AHMED SIDDIQUI, J:- The applicant is involved in a criminal case initiated on the basis of F.I.R. No. 01/2018, u/s 2 (37) & 33 of Sales Tax Act, 1990 lodged by the Commissioner I. R., Zone-VI, Corporate Regional Tax Office, Karachi.

2. I have heard the arguments and perused the record which urged me to observe as under:

- (a) The prosecution case is unfolded in the FIR with allegations that one Saif-ul-Mulk (sole proprietor of M/s. Mind Challenge NTN 4357348-7) got sales tax registration as manufacturer for weaving of grey fabric (Gents Bosky) and ladies lawn, wherein he has given the address of his facilities at Plot No. 117 & 118, Muhammad Khan Road, Block-M, Ittehad Town. Due to a tipoff, a survey of the said premises was carried out, which revealed that the said facilities are not being used by the said M/s. Mind Challenge. It is further revealed that at

the said place, several power looms are installed and owned by different persons, who disclosed that they did not know Saif-ul-Mulk (proprietor of M/s. Mind Challenge) and never rented out their facilities to him.

- (b) It is also alleged that the said Saif-ul-Muluk or M/s. Mind Challenge during the period under review imported various kind of fabrics amounting to Rs. 176,669,306/- as manufacturer for in-house consumption at the rate of zero percent under SRO 1125 (I) 2011 dated 31/11/2011 against which he is liable to pay sales tax Rs. 1,59,00,238/- and VAT of Rs. 35,33,386/- It is also alleged that the said registered persons has sold out imported finished taxable goods amounting to Rs. 12,92,30,561/- two different unregistered persons and avoided to pay the tax of Rs. 38,76,917/-. The said registered person also declared supplies of Rs. 4,74,38,745/- to M/s. Pearl Enterprises (NTN # 8969851-1) and M/s. Universal Enterprises (NTN # 8006846-2), who are registered at RTO, Islamabad but non-filer as the said sales treated as fake and in this way he caused further tax loss and as per estimation the total revenue evasion comes to the tune of Rs. 2,47,33,705/-
- (c) As far as allegations against the applicant is concerned, the same have appeared in the interim challan, according to which applicant Obaid Jamshed is well acquainted with the main accused Saif-ul-Malook and also connected with other accused persons. Per allegations, he is the broker and also claims himself as consultant for tax purposes and he disclosed all the related parties in alleged offence and admits himself for getting monitory benefits of Rs. 10,000/- per container. Allegedly, he has admitted before investigator

as his entitlement for 10% of tax invaded money in the racket.

- (d) From the above facts, it is evident that the main culprit is Saif-ul-Mulk (proprietor of M/s. Mind Challenge), while the applicants has acted as broker and provided connections with broker and clearing agents.
- (e) From the prosecution document, it is evident that the said Saif-ul-Mulk (proprietor of M/s. Mind Challenge) has given a wrong and incorrect address of his so-called facilities and the investigators have collected that the facilities mentioned in the Sales Tax Registration of Saif-ul-Mulk (proprietor of M/s. Mind Challenge) was never rented out to him. No question arises, how the registration certificate was issued to Saif-ul-Mulk (proprietor of M/s. Mind Challenge), as at the time of registration it is mandatory that the facility of manufacturer should be inspected by the sales tax authorities.
- (f) In the present scenario, it is clear that the officials of sales tax authorities are also involved in the whole affairs and they are very tactfully let off during investigation. It is the point regarding which the authorities should be mindful and take necessary steps at the time of furnishing final report before the learned trial Court. In case, the real culprits from the sales tax authorities will not be put to task by the investigation officer, it will also be amounting to negligent on his part; rather it will show his incompetence.
- (g) I am of the view that the applicant has allegedly acted in the instant matter as broker and consultant but there is nothing on the record to establish that he is entitled for getting share

of 10% in the invaded tax money. Besides, whatever allegations are mentioned, the same are based upon the extra-judicial confession of the applicant, which is uncorroborated so far and its veracity requires further probe.

- (h) The applicant is not the principal accused of the alleged offence and nothing concrete is available on the record to establish that the applicant is in league with the main accused person.
- (i) In the instant case co-accused Muhammad Amir and Muhammad Sohail succeeded in getting bail and the case of the applicant is at par to them.
- (j) In the instant case, the active part of the applicants is least tending while whatever evidence available against them is documentary in nature and the same is not in their control, as such there is no likelihood of tampering with the prosecution evidence by them.

3. In view of the above observations, I am of the considered view that the case against the applicant falls under the proviso of further enquiry and up to this point of time nothing on the record is available which shows his active connivance with the main accused regarding the offence; as such a case of bail has been made out in his favour. Resultantly, the applicant is admitted to bail subject of furnishing solvent surety up to the extent of Rs. 10,00,000/- and PR bond in the like amount through my short order dated 06-08-2019 and these are the reasons for the same.

4. It is further observed that if after releasing the applicants on bail, they choose not to appear before the trial Court and the trial Court is satisfied that the applicants become fugitives to law and trial or there are other grounds available before the trial Court that the applicants have violated the spirit of the relief given to them through this bill order; then the

trial Court will be fully justified to take any action against the applicants including cancellation of their bail and taking action against their sureties without making a reference to this Court.

5. Needless to say that the above observations are purely tentative in nature; and shall not have any bearing on the case of applicant and prosecution during trial.

JUDGE

Dated : _____