

ORDER-SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Spl. CrI. Bail Application No. 18 of 2018

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

Muhammad Ibrahim. Applicant.

Versus

The State. Respondent.

Date of hearing: 31.07.2019.

Applicant Muhammad Ibrahim through Mr. Waseem Shaikh, advocate.
The State through Mr. Ashique Ali Rana, Special Prosecutor Customs

ORDER

FAHIM AHMED SIDDIQUI, J:- The applicant is seeking anticipatory bail in a case registered against him, which was initiated through F.I.R. No. 481-DCI/7-5/FEST/INQ/10 dated 19-01-2011 lodged by Director General of Intelligence & Investigation FBR, Karachi for contravening Section 2(37), 2(9), 2(14)(a), 3, 6, 78 (1)(a) & (d), 8A, 22(1), 23(1), 25, 26(1) & 73 of Sales Tax Act, 1990, which are punishable under Section 33(3), (5), (8), (11-c), (13), (16) and (18) of the Sales Tax Act, 1990. The applicant approached to this Court after declining his similar plea by the trial Court vide order dated 23-02-2018. Nevertheless, he succeeded in getting interim relief by this Court through an order dated 26-02-2018.

2. Succinctly, the facts of the case are that the Director of Intelligence and Investigation, FBR, Karachi received an information that M/s. M. King International is involved in issuance of fake invoices and its output tax adjustment by other registered persons. After requisite approval, investigative

audit of the said firm was initiated and found that the said firm holds the category of importer/exporter/wholesaler. Notice under Section 25 of the Sales Tax Act were issued to the said firm but the same was returned with the endorsement 'Office not Exist'. On physical verification, it is found that the said office has been closed for the last 3/4 years. Ultimately, the notice issued at the residential address of the registered person namely Mushtaq Masih but the same was also returned with endorsement of 'Incomplete Address', hence it is established that the registered person got the registration on fake documents and engaged in the business of issuance of receipts of fake invoices and causing loss to national exchequers. Investigation expended and notices were sent to all the eight suppliers of the registered person for verification of taxable purchases and input tax involved therein. Out of eight persons, 04 suppliers replied that they had never supplied any goods to the said firm, while two notices were received back as undelivered with endorsements 'no such consignee exist at given address' or 'consignee office shifted', while reply of the remaining two notices was awaited till the time of lodgement of F.I.R. From the further investigation, it was revealed that the bank account of the said firm is also fake and it is estimated that the said firm/registered person has claimed/adjusted inadmissible input tax amounting to Rs. 33,435/- millions by declaring fake purchases of goods, raw material, services amounting to Rs.1,95,442/- millions from different suppliers during October 2008 to June 2009.

3. Although, the name of the applicant is not listed within the body of F.I.R. but the same transpires in the Supplementary Final Report (Challan).

4. Mr. Waseem Shaikh, the learned counsel for the applicant after drawing attention towards the factual matrix of the case prefers his submissions in support of the instant bail application. The gist of his contentions is that the applicant has been exonerated after adjudication in respect of the alleged tax

evasion as levelled by the prosecution. A criminal case in tax evasion matters depends upon the finding of the quantum of tax evasion and due to findings after adjudication; the criminal trial becomes impassive. He relies upon *Waseem Ahmed and another—vs—Federation of Pakistan and others (2014 PTD 173)*.

5. Briefly, the contention of Mr. Ashique Ali Rana, Special Prosecutor Customs is that the findings of adjudicating authority are not binding on the criminal trial. Regarding the case law cited by the learned counsel for the applicant, he submits that against the said case, an appeal is pending before the Apex Court. He also emphasises upon delay in joining the trial. According to him, bail can only be granted in such like cases when the amount of tax due is deposited with the Court. In support of his contentions, he relies upon *Azeem Khan—vs—The State (1996 SCMR 1569)*, *Meeral—vs—State (2010 PCrLJ 1300)* & *The Deputy Director, Directorate of Intelligence and Investigation, IR—vs—Sajid Hussain (2016 PCrLJ 1737)*.

6. I have heard the arguments advanced and have gone through the relevant record available before me. I have also enlightened myself from the citations relied upon by either side during the course of arguments. From whatever submitted or recited before me, I am able to form my opinion, as described in the foregoing paragraphs.

7. In the instant case, the name of the applicant has abruptly appeared in the Supplementary Final Report without assigning any specific role. Nevertheless, from the available record, it appears that the allegations against the applicant are that he had made purchases from the aforementioned registered person, who is allegedly got himself registered on the basis of fake documents and was operating to facilitate the others including applicant for the sales tax evasion. It is the case of the prosecution that the sale of

merchandise by the alleged registered person are actually not transacted and only fake and flyer invoices issued to the applicant.

8. It is the case of the applicant that the said phoney registered person was fully active and he was shown as the registered person on the website of FBR and the transactions made with him were genuine, while payments were also made through the banking channel. No doubt, the name of the aforementioned registered person transpires in the record and shown as a registered person at the concerned website, which indicates that the registration of the said registered person was intact at the time of alleged transaction as the said registered person was neither blocked nor blacklisted till that time, but it is to be seen whether the applicant has any hand in the scam or not.

9. After registration of FIR, the matter was also taken up by the Assistant Commissioner, Inland Revenue, who had passed an order wherein an amount of Rs.9,185,560/- along with default surcharge as well as penalty under Sections 33 and 34 of the Sale Tax Act, 1990 was shown as outstanding and recoverable in connection with the alleged FIR. In the instant case, the order of the Assistant Commissioner, IR, may be a good ground for consideration of the involvement of the applicant as responsible for tax evasion but the order of the Assistant Commissioner, IR was challenged by the applicant before the Commissioner, Inland Revenue (Appeals-IV), Karachi and the same was allowed and the order of the Assistant Commissioner, IR was annulled vide order dated 11-05-2017.

10. The learned Special Prosecutor submits that the criminal and civil proceedings can take place simultaneously and the adjudication by the Assistant Commissioner or even the Commissioner is not binding in a criminal case and applicant being white-collar criminal should not be treated mildly. The contention of the learned Special Prosecutor is that whatever the result of

adjudication; it will not wipe off the criminal case. I am not going to discard the contention of the learned Special Prosecutor and there is no question about it that the civil and criminal proceedings can take place side-by-side and both having no bearing upon each other. It is also not disputed that the white-collar criminals should be dealt with iron-hand and there should be no mercy for tax evaders, as they are involved in syphoning the public money and ultimately instrumental in weakening the State rather putting its existence at the stake. But at the same time, harsh action against tax evader is only justified when it is prima facie established that he is responsible for an act of causing loss to the public exchequer. Nevertheless, deciding a bail application and disposing of a criminal case are two distinct things but the parameters, which have been fixed by the superior Courts for disposal of bail application cannot be overlooked. No doubt, when it is proved after the trial that the accused is an offender of white-collar felonious act, he should not be spared. Similarly, at the time of disposal of bail application, if prima facie, the involvement of accused in the white-collar offence is apparent then it would be better that the Courts should not show generosity to such a resolute and audacious accused or at least if any mercy is shown then the loss to the public exchequer should be compensated. Nevertheless, the compensation of loss incurred is justified when no adjudication is initiated by the accused or the same is pending but in the present case it has been decided in his favour.

11. However, the case of the applicant is quite distinguishing. No doubt, he has been charged with tax evasion and the criminal case is still pending against him and the same should be decided on its merits but it is also a fact that after adjudication, the plea of benefit of doubt is available in his favour. Nothing on the record is available, which shows that the department has agitated against the findings of learned Commissioner before any forum. The very purpose of pre-arrest bail is to protect those in whose favour a strong plea of innocence is in existence to consider the availability of malice and

ulterior motive, which in my opinion are very much present at least for the applicant. As far as cited case laws are concerned, the same are distinguishing as he is not the principal accused nominated in FIR and at the most the allegation against him is that he is one of the beneficiaries and this aspect is also under clouds in view of the result of adjudication regarding tax evasion, which is still intact.

12. The ultimate outcome of the above discussion is that a case of pre-arrest bail has been made out in favour of the applicant; hence the interim relief extended to the applicant through order dated 26.02.2018 is hereby confirmed on the same terms and condition.

13. At this juncture, I would like to make it clear that if the applicant, after confirmation of this pre-arrest bail, remains absent from trial Court and in the trial Court is satisfied that the applicant has become absconder then the trial Court is fully competent to take every action against the applicant and his surety including cancellation of his bail without making a reference to this Court. The above observations are tentative in nature and will have no bearing upon the trial of the applicant.

JUDGE

Dated:_____