

ORDER-SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Spl. CrI. Misc. Application No. 140 of 2017
Spl. CrI. Misc. Application No. 145 of 2017

Date of hearing	Order with signature of Judge
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Spl. CrI. Misc. Application No. 140 of 2017

The Director General of Intelligence
& Investigation FBR. Applicant.

Versus

Shaukat Ali Nadeem. Respondent.

Spl. CrI. Misc. Application No. 145 of 2017

The Director General of Intelligence
& Investigation FBR. Applicant.

Versus

Faisal Nadeem. Respondent.

Date of hearing as well as for short order: 29.08.2019.

Applicant The Director I&I, FBR through Mr. Ashique Ali Rana, Special Prosecutor Customs.

Respondents Shaukat Ali Nadeem in Spl. CrI. Misc. Application No.140 of 2017 and Faisal Nadeem in Spl. CrI. Misc. Application No.145 of 2017 through Mr. Zain A. Jatoi, advocate.

ORDER

FAHIM AHMED SIDDIQUI, J:- Through this single order, I intend to dispose of the afore mentioned both the special criminal miscellaneous applications, as they are directed against one and the same order i.e. order dated 27-03-2017 passed by the learned Special Judge, Customs. The case against the applicants was initiated through F.I.R. No. 780/Appg-II/DCI/MMYZ Int/FIR/2017 lodged by the Director General of

Intelligence & Investigation FBR, Karachi u/s 156(1)(14)(14-A) of the Customs Act, 1969. Nevertheless, the learned trial Court granted bail to both the applicants in the referred case through the impugned order, which is under scrutiny on challenging by the applicant.

2. Succinctly, the prosecution case is that the Lahore-based M/s. Sunder Trading Company is involved in importing Sokkia brand survey equipment by concealing the actual transaction value of the goods through submission of fabricated invoices and in this way they have evaded huge duty and taxes on such imports. As disclosed in the F.I.R., the respondents Shaukat Ali Nadeem (CEO of the company) and his son Faisal Nadeem are running the business of the said company and they are involved in monopolised import of the earlier referred equipment being sole distributor of the Singapore-based supplier in Pakistan. As per F.I.R., the commodities so imported were declared by the accused persons manifold lower than the actual value, as verified from the port of load, Singapore through shipping agents M/s. Seagull Shipping & Logistic (Pvt) Ltd. Per F.I.R., the evaded tax was found to the tune of Rs. 78,74,532/-

3. After registration of these said F.I.R., the respondents were arrested but later on, they were released on bail through the impugned order.

4. Mr. Ashiq Ali Anwar Rana, the learned Special Prosecutor appearing on behalf of the Department argued the matter at length. According to him, the respondents are involved in causing heavy loss to the public exchequer, as such they were not entitled for any concession. After drawing attention towards para-4 of the instant application, he submits that the loss of Rs.78,74,532/- mentioned therein is for only one transaction, while previously the accused persons have imported so many such consignments; as such the actual loss is much more than the same mentioned in the F.I.R. He submits that at the time of raid, an amount of Rs. 1,24,20,000/- was also recovered /

confiscated from the office of the accused persons for which separates inventory was made but the learned trial Court is misguided from such recovery by considering that the evaded amount is recoverable from the said amount. According to him, the mis-declaration of goods and under invoicing is established from the documents and invoices verified from the port of loading, as such the offence against the respondents is fully established.

5. Conversely, Mr. Zain A. Jatoi, the learned counsel for the respondents forcefully opposed the instant application by submitting that the respondents are respectable businessmen and having a crystal clear record, but they have been harassed by the Customs Department with ulterior motives. According to him, the instant application also continues to offer such harassment. He submits that regarding the same transaction; adjudication was also carried out in which the respondents have been exonerated after trial. He further submits that when the adjudication has ended in favour of the respondents/accused, a great dent has caused in the prosecution case rather the same is faded to culmination. He submits that after getting bail, the respondents are regularly attending the trial Court and they have been appearing in this Court continuously until their appearance was dispensed with. According to him, word 'confiscation' cannot be used and the same is wrongly mentioned in the grounds of bail without the conclusion of trial. He submits that the recovered amount is actually the property of the respondents and they can be at the most retained the alleged tax evaded amount only. He further submitted that the respondents have never misused the bail and there is no likelihood of the respondents to become fugitive to law and trial. In support of his contention, he relies upon the cases of *Government of Pakistan v/s Mehmood Ahmed Qureshi (2002 SCMR 1527)*, *The Deputy Director, Intelligence and Investigation-IR v/s Sajid Hussain (2016 PCrLJ 1737)* and *Muhammad Akram v/s Zahid Iqbal (2008 SCMR 1715)*.

6. I have heard the arguments advanced and have gone through the relevant record available before me and citations placed during the course of arguments. In the instant case, the sole ground taken by the prosecution for cancellation of bail is that the amount mentioned in the F.I.R. is for one transaction only and probably a huge amount of tax evasion is involved by considering that the same practice would have been done by the respondents during previous imports. It is also the contention of the prosecution that the learned trial Court might have been misled by considering that the amount of Rs.1,24,20,000/- recovered from the office of the respondents is exceeding to the amount of tax evasion reported in the F.I.R. I am of the view that such remote probabilities come under the deeper appreciation of evidence, as such the same may not be considerable either at the time of granting bail or otherwise. Nevertheless, it was argued that the respondents have been exonerated after adjudication in respect of the alleged tax evasion. In response to a query, the learned Special Prosecutor acknowledges that the adjudication was capped in favour of the respondents. On a query, the learned Special Prosecutor submits that the department has not filed an appeal upon the verdict of adjudication to which the learned Special Prosecutor avoids to say something. However, his contention is that the civil and criminal proceedings have no bearing to each other and despite adjudication in favour of the respondents, the criminal proceedings will be continued and decided on its own merits. Nevertheless, if the adjudication is culminated in favour of the respondents, it has created a doubt regarding the prosecution case and it is the settled law that the doubt goes in favour of the accused even at the bail stage.

7. As far as cancellation of bail is concerned, the law has been settled in this respect. If bail has been granted to the respondents and they have not misused the same then ordinarily bail may not be cancelled unless the clear-cut violation of law is observed. It is the duty of the prosecution to establish

with concrete reasons that any of the grounds for recalling of the bail order is in existence. This Court has already thrown light upon those grounds in a case reported as *Abdul Ghani v/s the State (2000 PCrLJ 1574)* in the following words:

"An application for cancellation of bail can be moved on anyone of the five grounds namely; (1) that the order granting bail is absolutely contrary to the evidence on record from which a prima facie case of involvement of the accused is made out; (2) that the accused persons have misused the benefit of bail; (3) that there is a possibility of absconsion of the accused persons; (4) that there is a possibility of repetition of the offence charged with or commission of any other offence; and (5) that the accused are trying to tamper with the prosecution evidence."

7. In the present case neither of the aforementioned grounds have been specifically taken or argued nor they are actually available. Both the respondents are businessmen, not only they have furnished requisites surety but sufficient amount recovered from their office is also deposited/available at the mercy of prosecution and the respondents are attending trial, hence there are least chances of their absconsion. The case against the applicants based upon documentary evidence and/or the deposition of official witnesses; therefore, there is no chance of any tampering with the prosecution evidence. In these circumstances, I am of the considered view that the instant criminal miscellaneous applications are not meritorious; hence the same were dismissed through a short order dated 29-08-2019 and these are the reasons for the same.

JUDGE