

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH KARACHI**

Spl. Criminal Bail Applications No. 08 of 2022  
[Mukesh Kumar v. The State]

Spl. Criminal Bail Applications No. 09 of 2022  
[Yasir Abbas v. The State]

---

DATE	ORDER WITH SIGNATURE OF JUDGE
------	-------------------------------

---

For hearing of bail application.

**08-03-2022**

Mr. Ahmed Ali Hussain, Advocate for the Applicants.  
Mr. Muhammad Ahmed, Assistant Attorney General.  
Mr. Ashiq Ali Anwar Rana, Special Prosecutor Customs  
alongwith I.O. Mr. Liaquat Ali, Dte, I&I.

\*\*\*\*\*

FIR No. M-3232/DCI/Seiz/2022 dated 20.1.2022  
Under Section 2(s), 16 & 178 of the Customs Act, 1969  
Punishable under Clauses (8) and 89 of Sub Section (1) r/w  
Sub Section (2) of Section 156 of the Customs Act, 1969  
PS Directorate General Intelligence & Investigation  
Customs, Regional Office Karachi

**Adnan Iqbal Chaudhry J.**- The facts, as per the FIR, are that on 20.01.2022, on a tip-off, the Directorate General of Intelligence and Investigation-Customs carried out a search of bungalow No. 103/1, Phase-IV, DHA, Karachi under section 163 of the Customs Act, 1969 and seized, under section 168 of said Act, a large quantity of foreign-origin liquor suspected to be smuggled goods; that the Applicants/accused in occupation of said premises could not satisfy that the liquor was lawfully imported, and were thus arrested under sections 161 and 171 of said Act; they disclosed that the owners of the goods were Vakesh Kumar and Khalid Soomro, and that further quantities of liquor were similarly secreted at bungalow No. 54/11/II-B, 27<sup>th</sup> Street, Phase-V, DHA, Karachi, and bungalow No. 53-C, 5<sup>th</sup> Street, Phase-I, DHA, Karachi; on a search of the latter two premises also, a large quantity of foreign-origin liquor was seized suspected to be smuggled goods. In all, the liquor seized was as follows:

- (i) 14 cartons, 109 bottles and 624 cans from bungalow No. 103/1;

- (ii) 173 cartons, 620 bottles and 2856 cans from bungalow No. 54/11/II-B;
- (iii) 185 cartons and 1472 bottles from bungalow No. 53-C.

The value of the seized liquor was estimated at Rs. 61,985,000/-. The Applicants, and other accused persons, including said Vakesh Kumar and Khalid Soomro, were therefore booked for offences under clauses 8(i)(e) and 89(i) of section 156(1) of the Customs Act, 1969, cognizable by the Special Judge (Customs) under section 185-A of said Act.

2. Heard learned counsel and perused record.

3. The foremost ground taken by the learned counsel for the Applicants is that the Applicants having been arrested on 19.01.2022 were not produced before the Special Judge or any Magistrate until 22.01.2022 in blatant violation of Article 10(2) of the Constitution of Pakistan, 1973, which mandates that a person arrested has to be so produced within 24 hours; hence learned counsel submitted that the detention of the Applicants was unlawful to begin with. However, both the FIR and the memo of arrest mention the date of the Applicants' arrest as 20.01.2022 and not 19.01.2022 as averred by learned counsel. The date of 19.01.2022 first mentioned in the FIR seems to refer to the date of information received, not the date of arrest. Per the explanation/report submitted by the I.O to the Special Judge, the Applicants were brought to the Court of the Special Judge within 24 hours on 21.01.2022 for obtaining physical remand, but the Special Judge was reported to be at Hyderabad; that the Applicants had then to be transported to the Court of the link judge, but he had by then left the Court, so also the duty Magistrate; and therefore, the Applicants were produced before the Special Judge the next day on 22.01.2022. Therefore, it is not that the Applicants were never taken to the Court for production within 24 hours, but that the presiding officer of the Court was not available within the first 24 hours to record the Appellants' production. Though the I.O. ought to have acted with reasonable dispatch and not as casually as he did, the delay does not appear to be deliberate. In such circumstances, the

time consumed can be accounted for as 'excluding the time necessary for the journey from the place of arrest to the Court of the nearest magistrate' within the meaning of Article 10(2) of the Constitution. In the case of *Abdul Qadir v. Federation of Pakistan* (2002 SCMR 1478) relied upon by learned counsel, there the Supreme Court had not granted bail solely on a violation of Article 10 of the Constitution, but taking into view the attendant circumstances of the case.

4. Per the challan dated 25.02.2022, two more accused persons have since been arrested, however, the main accused, including Vakesh Kumar and Abdul Khaliq alias Khalid Soomro along with five others, are still at large. Per the investigation thus far, the aforesaid three bungalows were being used exclusively to store and distribute smuggled liquor through an entire network of persons, some who smuggled the liquor to the said bungalows, some who received orders from clients and others who made deliveries, also arrayed as accused persons; that books/registers that recorded such supplies, orders and distribution, along with a number of vehicles used in transporting the smuggled liquor have also been seized; that the accused Yasir Abbas was the driver of Vakesh Kumar; that the accused Mukesh Kumar was the employee of Vakesh Kumar.

5. The argument of learned counsel for the Applicants that the Applicants were merely the driver and chowkidar at bungalow No. 103/1 and were unaware of the liquor stored thereat or the distribution activity thereat, is hardly inspiring given the investigation report and section 178 of the Customs Act, especially when they were the ones who allegedly pointed to the other two bungalows from where a sizeable quantity of liquor was seized. As regards the argument that private witnesses from the locality were not associated during the search at the bungalows, that of itself is not a sufficient ground for bail given the huge quantity recovered.

6. Learned counsel for the Applicants had then submitted that given the role of the Applicants as driver and chowkidar, they can at

best be charged for the offence under clause 89(i) of section 156(1) of the Customs Act where under the maximum sentence is 6 years, which does not fall within the prohibitory clause of section 497 Cr.P.C. But even so, that does not entitle the Applicants to bail as of right in circumstances where the Applicants are alleged to be part of an entire network involved in harboring and distributing smuggled goods and were apprehended from the spot where such goods were secreted. I am also not convinced that they are not a flight risk.

7. In view of the foregoing, bail is denied to both Applicants. Bail applications are dismissed.

Needless to state that observations herein are tentative and nothing herein shall be construed to prejudice the case of either side at trial.

**JUDGE**

\*PA/SADAM