

IN THE HIGH COURT OF SINDH AT KARACHI
Special Appellate Court

Special Criminal Bail Application No.29 of 2021

Applicant: Dawood-Ur-Rehman through Mr. Khalid
Mehmood Kayani Advocate.

Respondent: The State through Mr. Muhammad Nadeem Khan
Assistant Attorney General along with
Investigation Officer Mr. Muhammad Tahir.

Date of hearing: 15.06.2021

Date of order: 15.06.2021

ORDER

Muhammad Junaid Ghaffar, J. This bail application has been filed by the present Applicant seeking post arrest bail in FIR No. 18 of 2020 registered under Section 156(8) & (89) of the Customs Act, 1969 read with Section 34/109 PPC further read with Section 3 & 4 of the Anti-Money Laundering Act, 2010, at P.S. FIA, Corporate Crime Circle, Karachi, as the bail application filed before the Special Judge Customs and Taxation Karachi stands dismissed vide order dated 3.5.2021.

I have heard the learned Counsel for the Applicant as well as the learned Assistant Attorney General along with the Investigation Officer and my observations are as under:-

- a) At the very outset after briefly hearing the learned Counsel for the Applicant and on perusal of the record including the interim Charge Sheet wherein it has been stated by the prosecution that *“during the course of investigation, it has come on record that accused Hifz-ur-Rehman [absconding accused] was the master mind of smuggling of Psychotropic controlled substance Ketamine HCL and he cunningly planned all details of the whole process by using different persons without their knowledge under the umbrella of export of rice”*, the learned

Assistant Attorney General was confronted as to how and under what pretext the bail application of the present accused is being opposed inasmuch as this observation (at least at the bail stage) not only absolves the present applicant from the alleged offence; but so also for the present purposes, not even implicates him and to this after consulting the Investigation Officer present in Court, he has failed to satisfactorily respond. On this the Investigation Officer was directly confronted and his response is that this is an interim report and the final report is yet to be filed. This is not only an absurd argument; but so also is devoid of any legal support. If that is the case then for the present purposes there is nothing to deny the concession of bail to the present applicant who is behind bars since more than 11 months.

- b) Notwithstanding this, on merits as well, it is not clear as to whether FIA has any jurisdiction in the matter as first an attempt was made to lodge the FIR under Section 156(8) & (89) of the Customs Act, 1969 read with Section 34/109 PPC further read with Section 3 & 4 of the Anti-Money Laundering Act, 2010 before the Special Judge (Customs & Taxation) and the learned Judge vide order dated 18.8.2020 was pleased to return the charge sheet to the Investigating Officer to submit the same before the Court having jurisdiction. This compelled the Applicant who was seeking bail in the matter to approach a Division Bench of this Court through CP No.D-4145 of 2020 and vide order dated 17.9.2020 while concurring with the findings of the Special Judge (Customs & Taxation) the prosecution was directed to present the charge sheet before the CNS Court established under the CNS Act, 1997. The matter did not ended here, as apparently the substance in question was not included in the Schedule of Control of Narcotics Act, 1997 as clarified by the Ministry of Narcotics Control vide its letter dated 1.2.2021. During

all this time the Applicant remained behind bars. It was further opined by the Narcotic Ministry to present the charge sheet before the Special Judge (Customs & Taxation) as the CNS Court had no jurisdiction. Similarly, the judge of the CNS Court also refused to hear and decide the bail application of the present applicant. This once again compelled the Applicant to approach the learned Division Bench of this Court who vide order dated 23.4.2021 in CP No.D-4145 of 2020 directed the prosecution to submit the charge sheet before Special Judge (Customs & Taxation). Finally the bail application of the Applicant has been dismissed as above.

- c) This creates serious doubts as to jurisdiction of FIA in the instant matter and as a matter of right, the Applicant ought to have been enlarged on bail in the given facts as above. Unfortunately he remained behind bars during all this period when the issue of jurisdiction and relevant Court to try the alleged offence was being decided. The prosecution ought to have known by itself as to under which law it intends to proceed. It has without any lawful authority included the provisions of CNS Act, in the charge sheet, whereas, the substance itself is not included in the Schedule of the CNS Act.
- d) Not only this, the Schedule to the FIA Act, 1974, does not include conferring of powers under the CNS Act, 1997; therefore, how a charge sheet was filed by FIA under the CNS Act, is a question to be looked into.
- e) It is also to be seen that whether the offence in question can be tried even under the Customs Act, 1969, (Clauses 8 and 89 of s.156(1)invoked by the prosecution) as admittedly the raid was conducted at a Warehouse which is not within the Customs Port area as notified under the Customs Act, 1969. The goods were not yet brought in within the Customs jurisdiction, whereas, no Customs document had

been filed i.e. a Goods Declaration. Further it is only a psychotropic substance of which any cognizance can be taken in terms of clause 89 ibid, and admittedly the goods so recovered are not specified or declared in the Schedule to the CNS Act, 1997 so as to attract the offence; hence, in these circumstances whether FIA was competent to act any further is also a matter of further probe.

- f) In view of these circumstances, it appears to be a case of further inquiry so as to determine the guilt and involvement of the accused in the alleged offence.

In view of hereinabove discussion, the Applicant had made out a case for grant of post arrest bail and by means of a short order dated 15.6.2021 he was granted bail on furnishing surety in the sum of Rs. 50,000/- with P.R. Bond in the like amount to the satisfaction of the trial Court and these are the reasons in support thereof.

J U D G E