

IN THE HIGH COURT OF SINDH AT
KARACHI

PRESENT: MR. JUSTICE SALAHUDDIN PANHWAR

SPL. CR. BAIL APPLICATION NO.165/2015

Applicant : Muhammad Faraz,
through Mr. Faheem Shah, advocate.

CR. REVISION APPLICATION NO.149/2015

Applicant : Muhammad Hussain,
through Mr. Muhammad Iqbal, advocate.

Respondent : The State,
through Mr. Ashiq Ali Anwar Rana, Special
Prosecutor, Directorate General of Intelligence
and Investigation-FBR,
Mr. Muhammad Javed K.K, Standing Counsel.

Date of hearing : 04.02.2016.

Date of announcement : 12.02.2016.

ORDER

Applicants seek bail in crime No.22-Exp/DCI/Div-IV/ISAF/2015 under section 2(s), 16, 32(1), 128 & 131 punishable under section 156(1) (8), (14), (45), (64), (86) & (89) of the Customs Act, 1969 after dismissal of their bail plea by learned trial court.

2. Facts of the case are that credible information was received through reliable source in this Directorate General of Intelligence and Investigations – FBR Karachi to the effect that M/s. Ports Connection (Pvt) Ltd, Bonded Carrier, Karachi and M/s. Saryal Cargo Channel & Customs Clearing Agency, Peshawar, with the

active connivance of other associate in crime were involved in the illegal and unauthorized pilferage/removal of boded goods from the containers of various consignments of ISAF meant for re-exportation from Mazar Sharif, Afghanistan to ISAF Germany through customs station Torkham, Custom House, Peshawar via Port Muhammad Bin Qasim, Karachi. In order to confirm the veracity of the information 17x40 containers having intact seals affixed by the shipper and customs, were examined by the staff of DIT on 02.4.2015 at Port Muhammad Bin Qasim, Karachi in presence of all authorized representatives. During examination from 8x40 containers instead of batteries filed with acid and maps huge quantity of wooden pallets, sand bags, concrete blocks and 01 box used tube lights were recovered hence FIR was registered against the accused.

3. I have heard learned counsel for both applicants and learned Special Prosecutor as well Standing Counsel.

4. Learned counsel for applicant Muhammad Faraz has contended that applicant is innocent and has falsely been implicated, that nothing was recovered from the applicant as he was arrested on 24.8.2015 and during the investigation no any clue was sort out towards the alleged consignment and offence. He also contended that consignments were inspected and examined in terms of clause 7(1) and not clause 7(ii) CGO at Torkham which means that the GDs inspected and examined on the basis of declaration made and customs documents, and physical examination of goods was not carried out which can be verified from the endorsement on GDs. He also contended that even otherwise no documentary evidence is prima facie available with the prosecution in shape of documents, the prosecution is having no other corroborate piece of evidence against he present applicant except the statement of the accused and as

such the case of the present applicant falls within the ambit of section 497(2) Cr.P.C. He further contended that the investigation is completed, challan has been submitted and custody is no more required for further investigation, therefore this is a case of documentary evidence as alleged and all the entire record is in possession of prosecution which requires the case of further enquiry and accused is entitled for bail.

5. Learned counsel for applicant Muhammad Hussain has contended that applicant is innocent and has falsely been implicated, that name of applicant is not mentioned in the FIR therefore applicant has no specific role in the alleged offence and falsely implicated, that even otherwise no documentary evidence is prima facie available with the prosecution in shape of documents, the prosecution is having no other corroborate piece of evidence against present applicant except the statement of the accused and as such the case of present applicant falls within the ambit of section 497(2) Cr.P.C. He further contended that investigation is completed, challan has been submitted and custody is no more required for further investigation, therefore this is a case of documentary evidence as alleged and all the entire record is in possession of prosecution which requires the case of further enquiry and accused is entitled for bail.

6. Learned Special Prosecutor for the State has vehemently opposed these bail applications.

7. Bail Application No.165/2015: I have gone through the record and considered the arguments of the parties. Record reflects that the goods 1x40 ft containers No.CAXU-4958618 (Out of 840 ft) loaded at Trailer bearing Registration No.TLP-561 from Custom Station Torkham Peshawar to Port Muhammad Bin Qasim vide GD No.98/274 dated 23.12.2014 was transported by accused Mujahid

out of which the bonded goods were mis-appropriated/pilferage. The accused/applicant Muhammad Faraz is Proprietor of M/s Saryal Cargo & Clearing Agency Peshawar and is doing business in the partnership of his brother Hassan Faraz. It is a matter of record that it was the accused who filed **GD** in respect of the 18x40 ft container of ISAF, re-exported from Afghanistan to ISAF Germany thereby declaring the description of the consignments as “batteries filled with acid and lamps” hence the accused cannot seek an exception to his responsibility which flows from **GD**, executed by accused himself. The *proprietor* or filer of **GD** *legally* cannot come with plea that since he was not controlling *container* at time of examination hence not liable for *pilferage*. Though the accused seeks an exception yet does not categorically deny the claim of prosecution regarding recovery of *wooden pallets, concrete blocks and sand bags* in place of article(s) mentioned/detailed in **GD**. The proprietor or one who files the **GD** takes complete responsibility of goods, *being carried* or *to be carried* else it shall amount to allowing an *exception* for pilfering by such person *through* his vehicle and *employee* who both *otherwise* are under direct control of such person particularly during a *consignment*. In short it is responsibility of proprietor or filer of **GD** to transport cargo in safe and sound condition and not of the vehicle or one holding steering thereof, therefore, I am of the clear view that no case for further enquiry has been made out.

8. Bail Application No.126/2015: I have examined the material available on record and considered the arguments of the parties. The record reflects that present applicant Muhammad Hussain is owner of trailer bearing Registration No.TLP-561 is deeply involved in illegal / unauthorized removal of bonded goods while en-route from Mazar Sharif, Afghanistan to ISAF Germany through

custom Station Torkham, Custom House, Peshawar via Port Muhammad Bin Qasim, Karachi. During the course of examination from 8 containers instead of batteries filed with acid and laps as declared in the export goods declaration, huge quantity of wooden pallets, sand bags, concrete blocks and 01 box used tube lights were recovered whereas remaining containers were found as per declaration of **GDs**. The *proprietor* or filer of **GD** *legally* cannot come with plea that since he was not controlling *container* at time of examination hence not liable for *pilferage*. Though the accused seeks an exception yet does not categorically deny the claim of prosecution regarding recovery of *wooden pallets, concrete blocks and sand bags* in place of article(s), mentioned/detailed in **GD**. The proprietor or one who files the **GD** takes complete responsibility of goods, *being carried or to be carried* else it shall amount to allowing an *exception* for pilfering by such person *through* his vehicle and *employee* who both *otherwise* are under direct control of such person particularly during a *consignment*. In short it is responsibility of proprietor or filer of **GD** to transport cargo in safe and sound condition and not of the vehicle or one holding steering thereof, therefore, I am of the clear view that no case for further enquiry has been made out.

9. In view of the aforesaid circumstances, I do not find it a case of further enquiry as such the bail applications of both the applicants/accused having no merit are hereby dismissed.

10. While parting, since by order dated 10th December 2015 instant Spl. Cr. Bail Application was converted into Revision Application, hence for further hearing in view of referred order, let the

matter be fixed on 15.02.2016 at 9.30 a.m. with intimation notice to all concerned through fax as well as cell phone.

Imran/PA

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