

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Applications No. 920 & 1661 of 2021

Applicant in : Amir Muhammad Siddiq s/o Siddiq Abdul
Cr. Bail No. 920 of 2021 Rehman, through Mr. Umar Farooq, advocate.

Applicant in : Syed Muhammad Aslam s/o Syed Muhammad
Cr. Bail No. 1661 of 2021 Nasir Khan, through M/s. Ghulam Mujtaba
Sahito and Kamran Hussain Rahoojo, advocates

Respondent : The State, through Firdous Fareedi, Special
Prosecutor Customs alongwith Nawabzadi
Aliya Khanji, Addl. Collector Customs.

Mr. Choudry Waseem Akhter, Assist. Attorney
General & Mr. Muhammad Ahmer, A.A.G.

Date of hearing : 26.01.2022
Date of order : 15.03.2022

ORDER

ZAFAR AHMED RAJPUT, J:- By this common order, I intend to dispose of above listed both criminal bail applications as the same have arisen out of same Crime/F.I.R. being No. I & P/1/2021, registered under sections 6, 7 & 8/9-C, Control of Narcotic Substances Act, 1997 at Model Customs Collectorate (Enforcement & Compilation), Customs House, Karachi.

2. Through listed criminal bail applications, applicants/accused Amir Muhammad Siddiq s/o Siddiq Abdul Rehman and Syed Muhammad Aslam s/o Syed Muhammad Nasir Khan seek post-arrest bail in aforementioned crime. Their earlier applications for the grant of same relief in Special Case No. 36 of 2021, bearing Nos. 39 & 99 of 2021 were dismissed by the learned Special Court-II (C.N.S.) Karachi vide orders, dated 17.05.2021 & 31.07.2021, respectively.

3. Brief facts of the case are that information was received from National Crime Agency (NCA), UK, British Deputy High Commission, Karachi that on 28.01.2021 Dutch Customs targeted five suspected containers, out of them, they searched Container No. HLXU-3540637 and seized 1500 Kgs of heroin and

arrested several Dutch and Turkish nationals; however, none of those arrested persons were known to have travelled to Pakistan or been in contact with criminal associates in Pakistan. The record of Pakistan Customs Computerized System (*WeBOC*) showed that the said container was exported from Pakistan as part of a consignment destined to Antwerp, Belgium. It was declared containing "Rock Salt", and cleared vide GD No.KAPE-86501, dated 23.12.2020. The aforesaid GD further showed that the consignment was exported in the name of exporter/consignor M/s. SR Enterprises and it was declared to Customs on behalf of the aforesaid exporter by M/s. Sea Liner, Karachi, who acted as agent of the aforesaid exporter for the purpose of this shipment. Hence, applicants Amir Mohammad Siddiq and one Naushad Ahmed were initially booked in the aforesaid F.I.R. being the owners of said firms on the allegations of participating in, abetting, aiding and facilitating in the commission of the alleged offence. Subsequently, the name of applicant Syed Muhammad Aslam was added in the Interim Challan with the allegation that he had furnished an Undertaking to the effect that he shall be liable to all consequences for any mis-declaration, recovery of narcotics and contraband items found in the consignment.

4. Learned counsel for the applicant Amir Muhammad Siddique has contended that the applicant is innocent and has falsely been implicated in this case by the complainant with mala fide intention and ulterior motives; that as per F.I.R. the detection and seizure date is 28.01.2021 whereas Vessel arrived in Antwerp on 03.02.2021 at 15:42 hours.; as such, there is a difference of about 06 days between detection/seizure and arrival of vessel at its destination, which creates doubt about the date, time of the alleged seizure/detection and actual place of recovery; that the applicant Amir Muhammad Siddique is the proprietor of "M/s. S.R. Enterprises", he is neither importer nor exporter and he only filed "Form-E" in the light of Foreign Exchange Manual before the State Bank for securing remittance as surety being commission agent on undertaking basis to co-

accused Syed Aslam in accordance with SOPs of the Customs and A.N.F., for that the applicant also took an Undertaking from co-accused Syed Aslam to the effect that he shall be liable to all consequences for a mis-declaration, recovery of narcotics and contraband items if found in the consignment; that recovered case property is not available with the investigating agency and case is being processed on presumption basis without taking any sample after detection; that the alleged container was thoroughly searched by the A.N.F. expert/officials at South Asia Pakistan Terminals Ltd (SAPT), at Karachi by opening the containers during export process in presence of witnesses and the trained dogs also sniffed the whole consignment under the supervision of A.N.F. officials, who finally cleared the shipment with their own signatures on relevant document of export along with fixation of seals of their department on the containers as "ANF done"; that the Customs officials also examined all the containers and allowed the consignment for loading on ship without any reservation and before loading of consignment on ship all containers were scanned from narcotics point of view but nothing was detected in the scanners and then shipment left Pakistan for its destination; that the applicant has no link with the alleged recovered contraband heroin and he has neither any knowledge about the concealment of the contraband in subject consignment nor the subject consignment ever remained in his possession, even he has not handled the same, which fact alone creates serious doubts regarding guilt of the applicant; that applicant has no responsibility regarding the consignment even he is exonerated as per immunity provided by the Foreign Exchange Manual, as all responsibility lies and fixed on the consignor/owner of consignment; that no reasonable ground exists to believe that the applicant is guilty of the alleged crime and there is a wide scope of further inquiry into the matter.

5. Learned counsel for the applicant Syed Muhammad Aslam while adopting the arguments of learned counsel appearing for applicant Amir Muhammad

Siddique has added that the applicant being a clearing and forwarding agent booked the container of the party with the Customs Authorities which was cleared on 13.12.2020 after thorough verification and checking by them; so also, Form-E for exportation and clearance of the consignment said to be contain Rock Salt was duly verified, and at that time no contraband article was found in the container; that the applicants are behind the bars since day of their arrest without any trial.

6. Conversely, learned Special Prosecutor Customs and Assist. Attorney General have resisted the bail applications on the grounds that the applicants are exporter of the consignment, who used their ID for GD Form, got issued Form-E and filed fake documents; that the applicants are involved in smuggling of 1500 kilograms of heroin. He; however, admits that the matter is still under investigation.

7. Heard, Record perused.

8. It appears that the applicant Amir Muhammad Siddiq is the owner of M/s. SR Enterprises; a firm indulges in import & export business, who through his User ID filed electronically Export GD No. KPEX-SB-86501-23-12-2020 through his authorized clearing agent, namely, M/s Sea Liners for the exportation of five (05) containers said to contain "Rock Salt" meant for Antwerp, Belgium on the recommendation of applicant Syed Muhammad Aslam and got issued Form 'E' from Main Branch of Standard Chartered Bank, I.I. Chundrigar Road, Karachi for the exportation, for that applicant Syed Muhammad Aslam furnished an Undertaking to the effect that he would be liable to all consequences for any mis-declaration, recovery of narcotics and contraband items found in the consignment. In order to safeguard his License and to protect himself from all subsequent consequences, applicant Amir Mohammad Siddiq also obtained Undertaking from applicant Syed Muhammad Aslam to be liable for all consequences in case of any mis-declaration or finding of narcotics or contraband items in the consignment.

9. It is an admitted position that the alleged consignment was thoroughly searched by the A.N.F. expert/officials at South Asia Pakistan Terminals Ltd. (SAPT) at Karachi by opening the alleged container during export process in presence of witnesses and the trained dogs also sniffed the consignment under the supervision of A.N.F. officials, who finally cleared the shipment with their own signatures on relevant document of export along with fixation of seals of the department on the container as "ANF done". It is also an admitted position that the Customs officials also examined the container and allowed the consignment for loading on ship without any reservation and before loading of consignment on ship, the container was scanned from narcotics point of view but nothing was detected in sensitive scanners and then shipment left Pakistan for its destination.

10. Record shows that the vessel having aforesaid container had various ports of call i.e. (1) PKSAP (2) NHAVA SHEVA (JAWAHARLAL NEHRU) (3) MUNDRA (4) JEDDAH (5) TANGIER (6) ROTTERDAM (7) HAMBURG (8) London GATEWAY PORT (9) ANTWERB-ANTWERPEN AND (10) LE HAVRE. The seized container was intercepted at port of call, Rotterdam, where it was destined to Antwerp (Belgium) and subsequently controlled delivery was sent to Antwerp i.e. port of destination.

11. During course of investigation, I.O. approached and requested to NCA for retrieving of informative documents and samples of case property through e-mails dated 25.09.2021, 13.10.2021, 26.10.2021, 05.11.2021, 22.11.2021, 23.11.2021, 15.01.2022 but no response from NCA has received. The I.O. also approached to Dutch Customs through e-mail dated 12.01.2022 as well as reminder dated 15.01.2022, but with no response. The Collectorate of Customs Enforcement, Karachi and the I.O. approached to Secretary (Enforcement & Coord.) Federal Board of Revenue (FBR), vide letter dated 12.08.2021, 11,12,2021 and 06.01.2022, to take up the matter of mutual legal assistance with Ministry of Foreign Affairs,

Islamabad and on reference from FBR, Ministry of Foreign Affairs requested both the Embassies of the Kingdoms of Netherlands and the Belgium for extending mutual legal assistance in the instant case; however, no response has been received from them till date.

12. The applicants are confined in judicial custody since 14.04.2021. The I.O. submitted Interim Challan on 22.04.2021 before the trial Court by stating *“that on receipt of requisite information/record from the concerned quarters, the pace of investigation would be widened accordingly and outcome thereof would be brought on record of this Honourable Court through submission of Final Challan”* and since the case is still under investigation, the trial Court has not taken cognizance of the offence against the applicants on Interim Challan, who are confined in judicial custody without any trial for last about 11 months. The I.O. has even failed to trace out the owner of the go-down where assorted bags said to contain Rock Salt were loaded. Applicants have allegedly facilitated the export of the alleged consignment on valid documents, which was subjected to scanning by the Customs as well as A.N.F. Prosecution is neither in possession of alleged recovered heroin nor any positive report of chemical analyses. Even it is not known if the alleged heroin was sent for chemical analyses or not after being detected from the alleged container. Prosecution has to establish the requisite conscious knowledge of the applicants about the presence of heroin in the consignment. The alleged consignment reached at about nine ports of call before being targeted by the Dutch Customs and it is not clear as to when and where heroin was concealed or replaced in journey after leaving Pakistan and who were the owner, master mind, seller and purchaser of the alleged recovered heroin.

13. In the circumstances of the case mentioned above, I have found the case against the above-named applicants as one of further inquiry as envisaged under sub-section (2) of Section 497, Cr. P.C. Consequently, the applicants are admitted

to post-arrest bail subject to their furnishing solvent surety in the sum of Rs. 10,00,000/- (*Rupees Ten Lacs Only*) each, and P.R. Bond for like amount to the satisfaction of the trial Court.

14. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicants on merits. In case applicant(s) misuses the concession of bail in any manner, it would be open for the trial Court to cancel his bail after issuing them the requisite notice.

JUDGE

Athar Zai