

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Spl CrI. Bail Apln No.81 of 2021

Spl CrI. Bail Apln No.49 of 2021

DATE

ORDER WITH SIGNATURE OF JUDGE

For hearing of Bail Apl

30.12.2021

Mr. Zain A. Jatoi, Advocate for the applicants

Mr. Ashiq Ali Anwar Rana, Spl Prosecutor Customs

-0-0-0-

These two bail applications are arising out of offences registered vide FIR No.01 of 2021 dated 15.6.2021. It is the prosecution case disclosed in the FIR that partners of Bahum Associates have evaded taxes and duties while importing goods in the years between 2015 – 2017 when goods declarations were filed. On receipt of knowledge through Prime Minister portal, as claimed by Mr. Rana, Spl Prosecutor Customs, proceedings were initiated and the principal in London, Mayphill (Perkins) was then inquired as to the authenticity of the invoices, on the basis of which goods declaration were filed at the relevant time. On receipt of the information, the FIR was lodged and proceedings were initiated. It is a case of the prosecution that the invoices submitted at the time of goods declaration were tempered and did not disclose correct valuation. This fact claimed to have been confirmed by M/s Mayphill (UK) Ltd [Perkins] which is a common name in so far as the Generator sets are concerned.

Mr. Jatoi submits that the goods declarations were considered on the basis of evaluating criteria and nothing prevented them from evaluating in terms of Section 25 of Customs Act 1969 which they failed. On the basis of portal information of the Prime Minister, the principal exporter was inquired after almost more than 4 – 5 years and on this strength, proceedings were initiated. Even the recovery proceedings in respect of `16` goods declaration, out of 20 in all, are time barred.

Learned counsel for the applicants has relied upon provisions of Section 32 r/w Section 211 of the Customs Act, however, it is my tentative view that those are in relation the process of of recovery which may, in that regard only, would come in the way of customs authority, however, this would not curtail right of the department to initiate criminal proceedings to which the limitation is not provided or restricted in the aforesaid provisions.

However, the documents retrieved after 4 – 5 years have been relied upon which too require its proof through the recipient of letter or its sender whoever it may be, and who have not been nominated in the list of witnesses, as alleged and not denied. Its production and proof are at premature stage.

When confronted with learned counsel for the department, Mr. Rana submits that substantial amount in the sum of Rs.185,778,505/-, as claimed by the department, is outstanding and though it is a simple case as far as evasion of duties and taxes are concerned, however, he concedes that in case 50% of the outstanding amount is secured by way of pay order/s [which department may encash], and 50% by way of post dated cheque/s, the department may not seriously oppose and would propose to conclude the trial at the earliest and till such time the applicants may be enlarged on bail.

I have heard learned counsel and the parties and perused the record.

I am of the view that proceedings triggered on the basis of the information received after 4 – 5 years from the principal and it is essential that such invoices be proved through the witnesses in support thereof and while it takes sometime, I am of the view that the applicants are entitled to bail subject to furnishing surety in the sum of Rs,1,000,000/- [Rupees One million] each, with Nazir of this court. This is apart from securing the amount i.e. 50% through pay order/s [liable to be encashed] and 50% through post dated cheque/s [to be secured with the department] of the outstanding amount of Rs.185,778,505/- within 10 days from today as suggested by Mr. Rana and agreed by Mr. Jatoi. I may point out that Mr. Rana also appeared before the Spl Court Customs/trial court.

In so far as connected Spl Crl. Bail Apln No.49 of 2021 is concerned, apparently the role of the applicant is only of a clearing and forwarding agent

and is not directly involved in the alleged offence of evasion of duties and taxes while filing goods declaration which he submitted in terms of instructions given by the principal importer i.e Bahum Associates whose partners were looped in the referred FIR and who have separately filed connected Spl CrI. Bail Apln No.81 of 2021.

Since the role of applicant in Spl CrI. Bail Apln No.49 of 2021 is of lesser degree as compared to the principal accused in Spl CrI. Bail Apln No.81 of 2021 and since the principal accused have been granted bail in the above terms, I deem it appropriate that the role of the applicant in Spl CrI. Bail Apln No.49 of 2021 is not significant and he is entitled for concession of bail on furnishing surety in the sum of Rs.500,000/- and PR bond in the like amount with the Nazir of this court.

These Bail Applications are are disposed of in the above terms.

J U D G E