

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

Crl. Bail Application Nos. 565 & 566 of 2023

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**DATE**

**ORDER WITH SIGNATURE OF JUDGES**

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For hearing of bail application.

**31-03-2023**

Mr. Ahmed Ali Hussain, Advocate for applicants.

Mr. Pervaiz Ahmed Memon, Spl. Prosecutor for Pakistan Customs.

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**Omar Sial, J:** Mohammad Ali and Ubaid Khalid Kiyani have sought post arrest bail in crime number SI/MISC/14/2023-EXP-KICT/WW registered under sections 6, 7, 8 and 9(c) of the CNS Act, 1997. Earlier their application seeking bail was dismissed on 07.03.2023 by the learned Special Court-II (CNS) Karachi.

2. The learned Special Prosecutor, Customs has explained to me the background of the case as follows:

- (i) There is a business entity by the name of *Arham Enterprises*, which is ostensibly owned by one Shad Sajjad.
- (ii) Shad Sajjad permitted a man by the name of Abdul Samad Ghazi to use his export quota and thus Abdul Samad Ghazi used Arham Enterprises Form E in order to book some containers for export.
- (iii) 3 empty containers were sent to the warehouse of Ghazi, where the same were loaded in his presence and an exporters' seal put on the containers.
- (iv) The stuffed containers were then sent to the KICT port for shipment to the U.A.E. The goods declaration for all 3 containers was filed by Intekhab Clearing Agency. The Clearing Agency is registered in the name of one Abdul Qadir, however, for all practical purposes the Agency is being run by Ubaid Khalid Kiyani (the applicant in Criminal Bail Application No. 566 of 2023). Mohammad Ali (the applicant in Criminal Bail Application No. 565 of 2023) was Kiyani's assistant helper.

- (v) When the containers reached KICT port, one of them was found to be suspicious thus it was decided to conduct a thorough search of it. Customs sleuths called Kiyani to come and witness the opening of the container. Kiyani along with Mohammad Ali came to the port and the container was de-sealed by the Customs in their presence.
- (vi) 23 kilograms of heroin were found in the container. The heroin was sealed and the F.I.R. registered the same day i.e. 04.02.2023 against Shad Sajjad, Abdul Qadir, Ubaid Khalid Kiyani, Mohammad Ali and some unidentified persons.

3. I have heard the learned counsel for the applicants as well as the learned Special Prosecutor for Pakistan Customs. My finding and observations are as follows.

4. I appreciate the fact that the learned Special Prosecutor has not beaten around the bush and given the facts in a professional and straight forward manner. He very frankly agreed that the evidence with the Customs shows that the container was stuffed at the warehouse of Abdul Samad Ghazi (verified by the driver of the trailer who had taken the empty container to the warehouse and then taken the stuffed container from the warehouse to the port). The container was de-sealed by the Customs at the port. Prima facie these facts show that the 2 applicants were neither present when the container was stuffed at Ghazi's warehouse nor did they have any control or access to the contents of the container after the same had been sealed by Ghazi till the time it was de-sealed by the Customs. At this stage Customs do not have any evidence against the applicants apart from the fact that the requisite Goods Declaration was filed by the Clearing Agency run by Kiyani. In my opinion, keeping in view the fact that prima facie the applicants did not have access to the container while being stuffed, sealed and transported to the port, makes the case against them one of further inquiry in order to prove that somehow the applicants were involved in the attempt to smuggle the sizeable quantity of narcotics out of the country. Even the very F.I.R. itself reflects that the 2 applicants were arrested as they were standing next to the container.

5. An aspect of the case that has swayed me to conclude that it is a case of further inquiry as far as the applicants are concerned is the admitted fact that Kiyani is a blind man and that Mohammad Ali has been engaged by him to assist him because of his blindness. Apart from the fact that the learned Special Prosecutor confirmed the blindness, the learned counsel for the applicants has put on record a Disability Certificate issued by the Department of Empowerment of Persons with Disabilities of the Government of Sindh on 24.12.2020. While it would be possible for a blind man to indulge in smuggling, the observations made in the preceding paragraph, make this fact of a disability, also tilt the balance for the grant of bail in his favour.

6. Upon a tentative assessment it appears unlikely that Kiyani would not have responded to Customs request that he should come to the Port as the Customs wanted to check a container for which he had filed a GD, had he been involved in placing the heroin in the container or in attempting to export the container knowing fully well that the Customs will find heroin in it. The natural reaction of a guilty person would perhaps be to go underground. Kiyani did not do so. While one can understand why Kiyani was included as a suspect in the case, no reason or evidence has been shown to also include Mohammad Ali, the person who appears to be the eyes of the blind Kiyani, in the case.

7. The entire evidence in the case has been collected. The applicants are no longer required for investigation. The possibility of the applicants tampering with the evidence, repeating the offence or being a flight risk appears to be remote.

8. I am of the opinion that the applicants have made out a case for further inquiry and thus grant of bail. They are therefore admitted to post arrest bail subject to their furnishing solvent sureties in the sum of Rs. 500,000 each and P.R. Bonds in the like amount to the satisfaction of the learned trial court.

JUDGE