

# THE HIGH COURT OF SINDH KARACHI

## Spl. Criminal Bail Application No. 11 of 2023

### For hearing of Bail Application.

Applicant/ Accused : Raheel Dhanani son of Deedar Ali through Mr. Ahmed Ali Hussain, Advocate.

Complainant/State : Through Mr. Khalid Rajpar, Special Prosecutor Customs alongwith Mr. Umar Khaliq, Preventive Officer/I.O., Customs, Karachi.

Mr. Gulfaraz Khattak, Assistant Attorney General for Pakistan.

Date of hearing : 28-03-2023

Date of order : 28-03-2023

*Case No. P-158/2023-Departure-JIAP dated 25-01-2023  
u/s: 2(s), 16 & 139 of the Customs Act, 1969  
sub-clause (e) of clauses (8), (9) and (70) of section 156 (I)  
r/w 2(b), (16) of the Baggage Rules, 2006  
notified vide SRO 666(I)/2006 dated 28.06.2006  
further r/w SBP Notification No. F.E. 2/2022-SB dated 08.11.2022*

## ORDER

**Adnan Iqbal Chaudhry J.** - The Applicant/Accused namely; Raheel Dhanani son of Deedar Ali seeks post-arrest bail in the aforesaid crime after the same has been rejected by the Special Judge (Customs & Taxation) by order dated 17-02-2023.

2. Per the FIR, on 24-01-2023, the Applicant/Accused was arrested on 24-01-2023 at the departure hall of Jinnah International Airport, Karachi, where he had arrived with his spouse and child to travel to Canada, and when US\$ 111,400/ and CAD 31,425/ both equal to US\$ 136,540/ (equivalent to PKR 31,103,812/) was found in his shoulder bag and trolley bag, which was far in excess of the limit of US\$ 5000/ fixed for taking foreign currency out of Pakistan by an adult as per Notification No.F.E.2/2022-SB dated 08-11-2022 issued under section 8 of the Foreign Exchange Regulation Act, 1947. Allegedly, the bags of the Applicant were searched after he was asked

whether he had any foreign currency to declare and he had answered in the negative; hence the intent to smuggle foreign currency out of Pakistan.

3. Learned counsel for the Applicant submits that the foreign currency was not concealed in the hand-bags, rather it was exposed; that the Applicant intended to declare the same at the declaration counter but he was stopped and arrested by officials before he could do so. On the other hand, learned Special Prosecutor Customs submits that the record showed that the Applicant was a frequent traveller and was therefore aware of the foreign currency permitted; that it is apparent that he has been and also was on the given day, trying to smuggle foreign currency out of Pakistan; that he did not make any attempt to declare the foreign currency, rather he had declined to do so.

4. Heard the learned counsel and perused the record.

5. As per the interim challan dated 13-02-2023, the Applicant was travelling on a Canadian passport and his statement was that he was shifting to Canada after his spouse had recently been granted permanent residency. The foreign currency was not recovered from any secret cavity of the bags. The interim challan also discusses albeit disbelieves money-changer's receipts produced by the Applicant, and source of his funds/income to contend that the foreign currency carried by him was his own property and not of any other person. In such circumstances, the submission on behalf of the Applicant that he had intended to declare the foreign currency in excess but was intercepted beforehand, cannot be ruled out at this stage. It has yet to be seen whether the Applicant was acting as a carrier for profit to smuggle foreign currency out of Pakistan for others, or whether it was a case of taking out his own funds primarily in breach of Notification No.F.E.2/2022-SB dated 08-11-2022. Learned counsel for the Applicant relies on the case of *Mirza Farhan Ahmed versus State* (2009 SCMR 304), where the Supreme Court granted bail in a similar case while observing as follows:

“5. Since it has not been controverted by the learned Deputy Prosecutor-General, Punjab, that the petitioner is not a previous convict, he is ill and his custody is no more required for the purpose of investigation and though the offence punishable under section 156(1)(8) carries a sentence of 14 years’ imprisonment yet, the act of taking out foreign currency out of Pakistan beyond the prescribed limit being not immoral or anti-social in nature rather technical because as per clause (f) of the S.R.O. in question, the Government itself has allowed taking out of Pakistan the amount upto US Dollars 10,000 or equivalent in other currencies, therefore, in our view a case for grant of bail in favour of the petitioner is made out. Accordingly, this petition is converted into appeal and allowed. The appellant shall be released on bail subject to his furnishing surety in the sum of Rs.1,00,000 (one lac), with P.R. bond in the like amount to the satisfaction of the trial Court.

6. For the foregoing reasons, the case against the Applicant calls for a further inquiry into his guilt falling within the ambit of sub-section (2) of section 497 Cr.P.C. He does not have a previous criminal record. It is not being contended that he is likely to tamper with the evidence if released. Thus, to keep him incarcerated does not serve any purpose, nor can that be done by way of punishment at this stage. The Applicant Raheel Dhanani is therefore granted bail subject to furnishing solvent surety in the sum of **Rs. 1,000,000/- [Rupees One Million Only]** alongwith P.R. Bond in like amount to the satisfaction of the trial Court.

Needless to state that observations herein are tentative and nothing herein shall be construed to prejudice the case of either side at trial.

**JUDGE**

SHABAN\*