

# THE HIGH COURT OF SINDH KARACHI

## Spl. Cr. Bail Application No. 19 of 2023

### For hearing of bail application.

Applicant : Karamat Hussain Shah son of Syed Khadim Hussain Shah through Syed Asif Ali Shah, Advocate.

Respondent : The State through Directorate General of Intelligence & Investigation Customs, Karachi through Mr. Ashiq Ali Anwar Rana, Special Prosecutor Customs along with I.O.

Date of hearing : 24-10-2023

Date of order : 24-10-2023

*Crime No. Appg-25/DCI/R&A/Shan Corporation/FIR/2022  
u/s: 32(1) & (2), 32-A r/w Section 79 of the Customs Act, 1969  
r/w Section 3, 6, 33, 34 of the Sales Tax Act, 1990 and Section  
148(1) of the Income Tax Ordinance, 2001, punishable under  
clauses (14) & (14A) of section 156(1) of the Customs Act, 1969  
P.S. Directorate General of Intelligence & Investigation  
Customs Karachi.*

## **ORDER**

**Adnan Iqbal Chaudhry J.** - The Applicant, Karamat Hussain Shah, seeks pre-arrest bail in the aforesaid crime after the same has been declined by the Special Judge (Customs, Taxation & Anti-Smuggling), Karachi by order dated 14-03-2023.

2. The offences alleged against the Applicant are of mis-declaration under section 32 (1) & (2) of the Customs Act, 1969 and of fiscal fraud under section 32-A thereof, the latter punishable under clause (14A) of section 156(1) of the Customs Act by imprisonment of 10 years or fine or both.

3. The Applicant is the importer of the subject goods. As per the FIR, the Directorate of Intelligence & Investigation (Customs) suspecting that the Applicant had mis-declared the actual quantity

and actual value of the imported goods while filing the Goods Declaration [GD], detained the consignment when it had been assigned for gate-out. An inspection carried out on 16.06.2022 revealed that the goods were far greater in quantity and of a value of US\$ 72,709.43 as against the declared quantity and value of US\$ 39,488.77, the details of which are in para-15.6 of the FIR. Duties and taxes allegedly evaded are computed at Rs. 8,780,094/-.

4. Heard learned counsel for the Applicant, the learned Special Prosecutor Customs, and perused the record.

5. Thus far, the fact that the goods imported were of a far greater quantity and far greater value than the goods declared, does not appear to be in doubt. The impugned order passed by the Special Judge also notes that an Order-in-Original has also been passed against the Applicant by the Collectorate of Customs (Adjudication-I). As per para-16.2 of the challan, the investigation further revealed that the packing list and invoice filed by the Applicant along with the GD was different from the one that he furnished to his bank for payment to the seller. Thus, the documents filed by the Applicant with the GD are also found to be forged and fabricated.

6. The primary submission of learned counsel for the Applicant is that the Applicant had engaged one Kazim Rizvi as a clearing agent, and therefore he was unaware of the alleged mis-declaration. However, as per the investigation, the GD was uploaded to the WeBOC system under the ID of the Applicant and not of any Kazim Rizvi or any other clearing agent. So also, the Applicant was unable to provide the I.O. with any credentials or identification of said Kazim Rizvi, rather he stated that he had never even met such person.

7. It is settled law that grant of pre-arrest bail is an extraordinary relief which may be granted in extraordinary situations as for example to protect innocent persons against victimization through abuse of law for ulterior motives; and that pre-arrest bail is not to be

granted as a substitute or an alternative to post-arrest bail.<sup>1</sup> Learned counsel for the Applicant is not able to demonstrate any *malafides* underlying the FIR which remains the primary test for the grant of pre-arrest bail.

8. For the foregoing reasons, the Applicant has not made out a case for grant of pre-arrest bail. Therefore, the bail application is dismissed.

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

**JUDGE**

\*PA/SADAM\*

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<sup>1</sup> *Rana Muhammad Arshad v. Muhammad Rafique* (PLD 2009 SC 427).