

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
Special Criminal Bail Application No.82 of 2023

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Date	Order with signature of Judge
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For hearing of bail application

**16.11.2023**

Mr. Muhammad Vawda advocate for the applicant  
Mr. Muhammad Ahmed, Assistant Attorney General  
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Through this Criminal Bail Application, the applicant Azhar Iqbal seeks post-arrest bail in FIR No.P-1267/2023 for offences punishable under Sections 2(s), 15, 16 and 139(2) of the Customs Act, 1969, read with Clauses 8, 9 and 70 of Section 156(1) of the Customs Act, 1969, read with Rules 2(b) and 16 of the Baggage Rules, 2006, read with Section 3 of the Import and Export Policy Order, 1950, further read with Serial 16 of SRO 566/2005 dated 06.6.2005.

2. The case of the prosecution is that on September 06, 2023, the applicant along with his accomplices was apprehended by the Customs Police while carrying dutiable and prohibited items in their baggage in Violation of the Customs Act, 1969, which were seized under the mushirnama and notice under Section 171 of the Customs Act, 1969, was allegedly served upon the applicant/ owner/passenger, resultantly, the subject FIR was lodged against the applicant and others on 7.9.2023. His earlier bail plea has been declined by the trial Court vide order dated 03.10.2023 on the premise that sufficient material was/is available with the prosecution suggesting that the applicant accused in collusion and in connivance with each other committed the offense of smuggling of mobile phones and other contraband goods.

3. Mr. Muhammad Vawda learned counsel for the applicant has submitted that the value of the seized goods has not been properly determined under the law as such no sanctity can be attached to such determination by the Customs Authority. He further submitted that the order passed by the learned trial Court is based on hearsay evidence as there was no material available against the applicant to connect him to the alleged crime, besides mere registration of multiple FIRs bail cannot be refused on this score alone. Learned counsel emphasized that in most of the cases, the applicant has been acquitted, the matter was compromised, and/ or the applicant was discharged and/ or not sent up for trial. He next added that the offense does not fall within the prohibitory clause of Section 497(1) Cr. P.C. He next argued that seized goods are in the custody of the Customs Authority as such no fruitful result will come out

to keep the applicant behind the bar for an indefinite period. He next submitted that the statement made before the police/Custom Authority is inadmissible in evidence in terms of Article 38 of the Qanoon-e-Shahadat Order; that the applicant has been travelling from Dubai to Karachi and nothing has been brought on record against him only he was intercepted and illegally detained by the Customs Authority on the purported plea that the applicant brought banned items without paying its Custom Duty. He further submitted that as per Section 103 Cr.P.C., it is the mandatory requirement that the evidence of independent witnesses are to be recorded, whereas in the instant case, it is seen that there is no independent witness and all the mashirs are that of the Customs Department. He added that since legal formalities have not been fulfilled, therefore, the applicant/accused is entitled to post-arrest bail. Learned counsel stated that to attract the provisions of Section 156(1)(8) of the Customs Act, first there has to be an offense and only thereafter punishment could be awarded and since in the present case the provisions of Section 2(s) of the said Act has been invoked and it is yet to be ascertained whether applicable or otherwise, as the action taken under Section 156(1)(8) of the Customs Act is illegal and was/is uncalled for. He further stated that there is a marked contradiction about the time of the offense, service of alleged notice, and other formalities also, hence, if all the above factors are taken into consideration the present case would become a fit case for grant of bail based on Section 497(2) Cr. P.C. He has submitted that there is no criminal record of the applicant/accused except two cases as portrayed by the prosecution as such their statement cannot be taken into consideration at the bail stage. He further submitted that no opportunity for declaration was given to the applicant/accused as such the applicant cannot be saddled with the criminal liability of the alleged smuggling. He further submitted that the alleged items are available for sale on the internet, hence, the same cannot be considered to be prohibited/banned items, however, if there is an allegation on the aforesaid analogy it is for the trial Court to determine the guilt or innocence of the applicant which is only possible when the trial Court record evidence of the Customs Authority. He prayed for allowing the instant Criminal Bail Application.

4. Learned Assistant Attorney General has opposed the bail plea of the applicant and argued that the applicant was arrested and recovery of mobile phones and other contraband goods were made from him and the applicant is liable to pay Rs.21, 956,426/- Customs duties and taxes leviable on such contraband goods. He next argued that the applicant has been indulged in various crimes and as many as 12 FIRs have already been registered against him in the different police stations of Karachi. He next argued that during the examination of the baggage of the applicant

and other accused, Customs authorities recovered 36 I-Phones valuing Rs 13,610,500/- and 472 dandas of cigarettes valuing Rs.3, 846,800/- along with other items; that both these recovered items are notified items that are banned from import into Pakistan. He lastly submitted that substantial material is available with the prosecution against the applicant and he has failed to make out his case for grant of bail under section 497 Cr.PC., He further submitted that if the applicant is released on bail, he will repeat the offense and will abscond away, therefore his bail application is liable to be dismissed.

5. I have heard learned counsel for the parties and have perused the material available on record.

6. It is a well-settled law that at the bail stage only a bird's view of evidence is taken into consideration. A deeper appreciation of evidence is neither permissible nor required to conduct anything like a preliminary trial to determine the accused's guilt or innocence. However, for deciding the prayer of an accused for bail, the question of whether or not there exists reasonable grounds for believing that he has committed the alleged offense cannot be decided in a vacuum. The court, for answering the said question, has to look at the material available on record when the bail is applied for and be satisfied that there is, or is not, prima facie some tangible evidence which, if left un rebutted, may lead to the inference of the guilt of the accused.

7. In the present case, it appears from the record that the applicant was arrested by the Preventive Officer of the Collectorate of Customs, Jinnah International Airport Karachi, and was found carrying alleged contraband items/goods valued at Rs. 61,761,189/-. The trial Court rejected the bail plea of the applicant vide order dated 03.10.2023 on the ground that the applicant along with his accomplices was collectively carrying 15 suitcases and trolley bags, four shoulder bags and 8 Carton, the Customs Authority recovered 36 I-phones valuing Rs. 13,610,500 and 472 dandas of Cigarette valuing Rs. 3,846,800 along with other items and as per prosecution the recovered items were/are notified to be banned items, which could not be imported.

8. The applicant has taken the plea that the alleged recovered goods were/are neither prohibited nor restricted as per the Import Policy Order and that the personal baggage has not been brought into Pakistan in breach of any prohibition or restriction as provided under the Customs Act 1969 as he has not committed the alleged offense as defined in the said Act. Besides the offenses applied by the prosecution do not fall within the

prohibitory Clause of Section 497(1) Cr. P.C., as no proper valuation has been made by the Customs Authority, which is the function of the concerned Tribunal to adjudicate whether the alleged items were properly valued or otherwise and whether the same were/are banned items under the Import Policy Order. As prima facie, the matter pertains either to the issue of alleged smuggling or misdeclaration and /or valuation of the items/goods allegedly recovered from the applicant/accused. These all facts need to be thrashed out by the trial Court after recording the evidence of the concerned officers from the Customs Department.

9. After analyzing the material available on the record, it appears that where the case entirely depends upon documentary evidence, which seems to be in possession of the prosecution, the question of tampering with the evidence does not arise. It is well-settled law that where an accused is charged under two different Statutes/SROs or laws then he can only be tried for offenses under the law, which provides a lesser sentence provided that the offenses are alike or similar; that where a person is accused of having committed a crime, which he could not commit without either involvement of duping of State functionary unless such role of the State functionary is also on record and if circumstances so warrant, no action has been taken against the State functionary who allowed the accused to travel to Pakistan with such contraband items as alleged, as the applicant along with his alleged accomplices were intercepted by the Customs Authority when they arrived via Air Blue Flight PA-111 from Dubai to Karachi. And upon examination, such items were unearthed and as per the prosecution, the act of the applicant falls within the ambit of the aforesaid provision as discussed in the preceding paragraphs. Prima facie all allegations need through probe, which is the function of the learned trial Court, and at the bail stage these factual controversies cannot be undertaken.

10. Accordingly, on the tentative assessment of the facts and circumstances of the case, I am of the tentative view that the matter squarely falls within the preview of further inquiry. The offenses do not fall within the prohibitory clause of section 497(1) Cr. P.C, and the applicability of section of the Customs Act and enabling provisions is yet to be determined by the trial court, therefore, prima facie, the material currently available on the record of the case is not sufficient to say that there are reasonable grounds for believing that he has committed the alleged offenses; but there are sufficient grounds for further inquiry into his guilt in terms of Section 497(2) of Cr.P.C. On the aforesaid proposition, I am guided by the decisions of the Supreme Court in the

cases of *Muhammad Sarfraz Ansari Vs.The State* **2021 PLD SC 738** and *Malik Muhammad Tahir Vs.The State* **2022 SCMR 2040**.

11. Adverting to the ground taken by the learned Assistant Attorney General that the applicant has been indulged in so many criminal cases and as such he will repeat the offense if released on bail, suffice it to say the mere registration of a criminal case is no ground to refuse bail as the Court has to decide the present lis on its merit.

12. In view of the above, this bail application is accepted and the applicant is admitted to bail provided he furnishes solvent surety to the tune of Rs.10,00,000/- (Rupees Ten lac) with P.R bond in the like amount to the satisfaction of the learned trial court, who shall ensure that the surety must be local, reliable and men of means. As for the apprehension of the learned AAG that the applicant will abscond away, suffice it to say that his name shall also be placed on the ECL forthwith and he shall ensure his attendance on every date of the trial proceedings so that the trial is not delayed on his account. In the event he fails to do so, the Customs Authority shall be at liberty to apply to recall this order. The applicant and or Customs Authority, whoever is in possession of the passport of the applicant shall surrender with the trial Court.

JUDGE