

THE HIGH COURT OF SINDH KARACHI

Criminal Bail Application No. 1959 of 2023

Applicant/Accused : Yawar Abbas son of Bakhsh Ali Khuwaja through M/s. Zain A. Jatoi, Mustafa Mamdani and Jazib Aftab, Advocates.

Complainant/State : Through Mr. Gul Faraz Khattak Assistant Attorney General for Pakistan along with Ms. Amara Qureshi, AD/IO, FIA Anti-Corruption Circle, Karachi.

Criminal Bail Application No. 2166 of 2023

Applicant/Accused : Tariq Mehmood son of Adalat Hussain through M/s. Shaukat Hayat and Allah Wasaya Zubair, Advocates.

Complainant/State : Through Mr. Mobashir Ahmed Mirza Assistant Attorney General for Pakistan along with Ms. Amara Qureshi, AD/IO, FIA Anti-Corruption Circle, Karachi.

Date of hearing : 05-10-2023

Date of order : 05-10-2023

*FIR No. 19/2023 dated 14.07.2023
U/s: 5(2) PCA 1947 R/w 156 (8) & (89) of
Section 156(1) of Customs Act, 1969
R/w Section 109 PPC
P.S. Anti-Corruption Circle, FIA, Karachi*

ORDER

Adnan Iqbal Chaudhry J. - The FIR was lodged for the offence of criminal misconduct punishable under section 5(2) of the Prevention of Corruption Act, 1947 [PCA], and for offences of smuggling punishable under clauses (8) and (89) of section 156(1) of the Customs Act, 1969. On the premise that said offences are triable by separate special courts, one challan has been submitted before the Special

Judge (Customs, Taxation & Anti-Smuggling) Karachi for offences under the Customs Act, and one challan has been submitted before the Special Judge (Central-I) Karachi for the offence under the PCA. The question as to which court can try both offences is pending before this Court under section 561-A CrPC. In the meanwhile, and to the extent of the offence of smuggling alleged in the FIR, both the applicants/accused (Yawar Abbas and Tariq Mehmood) have been granted post-arrest bail by the Special Judge (Customs, Taxation & Anti-Smuggling). However, the Special Judge (Central-I) Karachi, before whom applications were separately moved for post-arrest bail for the offence alleged under the PCA, declined bail *vide* order dated 31-08-2023 and 18-09-2023 respectively, hence these bail applications.

2. Both the applicants/accused are Customs officers hence public servants. Yawar Abbas is Superintendent (ASO) with the Directorate of Intelligence & Investigation; and Tariq Mehmood is Senior Preventive Superintendent, Anti-Smuggling Organization (ASO).

3. As per the FIR, on 13-07-2023, around 21:30 hours, in furtherance of an enquiry, a team of the FIA intercepted the accused persons at the domestic departure lounge of Jinnah International Airport Karachi when they were about to board a flight to Islamabad; that upon query, the accused led the FIA team to the official vehicle in which they had arrived parked at the airport parking lot as they intended to come back in 2 days; that the vehicle was searched and the following was recovered: Rs. 5,437,200/, US\$ 2406/ and UAE Dirhams 6100/; that on being confronted with the source of that money, the accused confessed that the same was speed money collected from the customs check-post at Mochko, Kemari for onward distribution amongst various customs officers; that the money was seized and the accused were taken to the P.S. for further questioning; that there they confessed that they were part of a network involved in facilitating smugglers in the transport of smuggled goods; that they

divulged the names of other customs officers and persons who were part of that network; hence the FIR in the morning of 14-07-2023.

4. As per the challan, both the accused persons revealed on interrogation that they were part of an organized network of customs officers involved in facilitating the smuggling of betel-nuts, Irani diesel and other goods on receipt of gratification collected from smugglers at various check-posts into the city, which gratification was then collected and distributed by the accused amongst a chain of customs officers. Both accused are said to have disclosed the names of customs officers and smugglers involved in the crime. The accused Tariq Mehmood further disclosed that the collection of gratification from four main check-posts at Mochko, Mach Goth, Sohrab Goth and Ghaggar Phatak was between Rs. 40 to 50 million per month, and the collection for facilitating the transport of smuggled betel nuts into and around the city was around Rs. 60 million per month. The accused Yawar Abbas disclosed the *modus operandi* of such organized smuggling at Yousuf Goth Bus Terminal where smuggled goods arrive and are loaded onwards generating a gratification of Rs. 5 million per month.

5. Heard learned counsel for the accused persons and the learned Assistant Attorney General who is assisted by the I.O. of the case.

6. As noted at the outset, these bail applications are confined to the offence alleged under section 5 of the PCA, *viz.* criminal misconduct by a public servant which includes the obtaining of gratification as a motive or reward. Section 5(2) which prescribes the punishment for that offence was amended by the Prevention of Corruption (Amendment) Act, 2021 to increase punishment from seven years or fine or both, to imprisonment for a term which may extend to ten years but not less than seven years. The offence therefore presently falls within the prohibitory clause of section 497 CrPC.

7. Per learned counsel for the accused the entire event leading to their arrest is fabricated; that the accused were in fact picked up by the FIA on 07-07-2023 and eventually shown as taken into custody at the airport after seizure of money from a vehicle with which they had no nexus. In support of that submission they rely on news reports of 8th and 9th July which read that the accused were missing and were suspected to have been abducted. However, the air-tickets of the accused and the boarding cards issued to them for a flight from Karachi to Islamabad on the night of 13-07-2023, placed on the record by the I.O., places the accused at the Karachi airport at the given time. Consequently, there is also no doubt as to official vehicle parked at the airport in which the accused arrived, from which money was seized stashed underneath a seat, and especially when the accused themselves led the FIA team to said vehicle. Per the I.O., it has been verified that the vehicle was allotted by the Directorate of Intelligence & Investigation to the accused Yawar Abbas. In any case, given the quantum of the money seized, and absent any apparent ulterior motive, it is quite implausible to suggest that the accused were framed by the FIA.

8. Learned counsel for the accused then submit that the only evidence against them is their extra-judicial confession which is inadmissible. But then it is also a fact that such confession has led to the recovery of other incriminating evidence as follows:

- (i) The accused Tariq Mehmood confessed that he collected the gratification received at various check-posts and distributed it amongst a chain of customs officers; and that the details of such collection and distribution were recorded by him in a ledger kept at his office. On Tariq's pointation, such ledger was recovered from his office on 15-07-2023 which records the amount collected from various check-posts and its distribution amongst customs officers.
- (ii) The accused Tariq Mehmood also disclosed that Usman Bajwa and Amir Thaeem (erstwhile Collectors

Enforcement) used to instruct him to convert their share of the gratification into gold, which instructions he passed on to Tayyab Khan (Senior Preventive Officer) who purchased gold from Jewel Palace Jewelers which was then delivered by Tariq to Usman Bajwa and Amir Thaeem. After a raid at that jeweler, the FIA seized the record of sale of 610 tolas of gold amounting to Rs.130,000,000/- made to Tayyab Khan. The FIA also recovered a diary from Tayyab Khan's residence containing names of smugglers that matched with the names of smugglers disclosed by Tariq.

- (iii) The cell phone recovered from Tariq Mehmood contained text messages exchanged with a smuggler with regards to the quantum of gratification for facilitating the smuggling of betel nuts.
- (iv) The cell phone recovered from Yawar Abbas shows him to be in contact with the smugglers named by Tariq Mehmood, and of receiving texts from of number plates of vehicles carrying smuggled goods. It also shows him to be in a WhatsApp chat group of customs officers who shared smuggling activities, kept a log of vehicles carrying smuggled goods, and shared rates of bribes.

Therefore, not only is the extra judicial confession of the accused corroborated but other evidence, but that other evidence can stand independent of the confession.

9. The bail order passed by the Special Judge (Customs, Taxation, Anti-Smuggling) does not help the accused here. Firstly, and admittedly, that bail is only for the offence alleged of smuggling under the Customs Act. Secondly, that bail was granted in view of the fact that the details of the smuggled goods and their value were uncertain for the purposes of clauses (8) and (89) of section 156(1) of the Customs Act, and hence a case of further inquiry. Needless to state that the offence under section 5(2) of the PCA is separate from the offence of smuggling under the Customs Act and would entail a separate charge in terms of section 235 CrPC. It is a different matter that it has yet to be ascertained whether both offences can be tried together.

10. Learned counsel for the accused cited the cases of *Muhammad Ashraf v. The State* (1996 SCMR 181) and *Bashir Ahmed v. The State* (2001 SCMR 634) to submit that in allegations of taking bribe, not only the payment of bribe by the complainant to the accused has to be seen, but the conversation between them has also to be heard by the raiding party. Reliance on said cases is completely misplaced. Firstly, that observation is in cases of entrapment; and secondly, it was after a full-fledged trial. The argument that the alleged smugglers have not been arrayed as accused persons is premature at this stage. As pointed out by the Assistant Attorney General, investigation is still on-going.

11. In the instant case, the fact of the matter remains that the accused persons have not offered any explanation whatsoever to suggest that the huge amount of money recovered from their official vehicle may have been from a legitimate source; and as noted in para 8 above, the evidence gathered thus far connects them to the alleged crime. A deeper appreciation of that evidence is neither desirable nor permitted at this stage. Therefore, both bail applications are dismissed.

The observations above are tentative, and nothing herein shall be construed to prejudice the case of either side at trial.

The office shall place a copy of this order in the other bail application.

PA/SADAM

JUDGE