

# THE HIGH COURT OF SINDH KARACHI

## Spl. Cr. Bail Application No. 64 of 2023

### For hearing of Bail Application.

Applicant/ Accused : Hassan Ali Badami son of Qasim Ali Badami through M/s. Muhammad Nadeem Qureshi and Tariq Malik Khan, Advocates.

The State : Through Mr. Ghulam Asghar Pathan, Advocate and Mobashir Ahmed Mirza, Assistant Attorney General.

Date of hearing : 12-10-2023

Date of order : 12-10-2023

*FIR No. 04 of 2023 dated 09.08.2023  
u/s 3(1)(a), 6(1) & (2), 7(1), (2),(i)(ii),  
8(1)(a)(ca)&(d), 8A, 21, 22(1), 23(1), 26(1)  
and 73 of Sales Tax Act, 1990 r/w section 2(37),  
punishable u/s 33(3),(5),(8),(11c),(13),(16),(18) ibid  
P.S. Directorate of Intelligence & Investigation-IR,  
Sales Tax House, Karachi.*

## **ORDER**

**Adnan Iqbal Chaudhry J.** - The Applicant seeks post-arrest bail in the aforesaid crime after the same has been declined by the Special Judge (Customs, Taxation & Anti-Smuggling) by order dated 09-09-2023.

2. Heard the counsel for the Applicant and the Special Prosecutor for DG I&I-IR. At this juncture the Assistant Attorney General enters appearance and requests for an adjournment. Request is declined.

3. The Applicant was arrested under section 37A of the Sales Tax Act, 1990 and booked for 'tax fraud' as defined in section 2(37) of the Act for making and using fake/flying sales tax invoices during the period November 2018 to March 2023.

4. There are two sets of transactions highlighted to allege tax fraud by the Applicant as sole proprietor of M/s. Badami Brothers.

As per the FIR, Badami Brothers declared purchases of 'solvent' made from ENAR Petroleum and its onward sales/supplies to Nasif (Pvt.) Ltd., which in turn purported to be a supplier of reclaimed lead to battery manufacturers but was found having no manufacturing activity on the ground. It is therefore alleged that sales tax invoices created by Badami Brothers to reflect output tax on supplies to Nasif (Pvt.) Ltd. are fake and hence a tax fraud. In the final challan it is further alleged that though Badami Brothers made advance payments to ENAR Petroleum via bank deposits for purchasing the solvent, but delivery of that solvent was given to unregistered persons while falsely reflecting such sales to registered persons, hence a tax fraud.

5. To establish the culpability of Badami Brothers, it is not sufficient merely to allege that the output tax declared by it on supplies to Nasif (Pvt.) Ltd. is false. The DG I&I-IR has also to connect such output tax to the input tax declared/claimed by Badami Brothers for those supplies and to demonstrate that such input tax too was inflated or falsified so that on a deduction of the former from the latter, a tax credit or tax refund would arise. As explained by a learned Division Bench of this Court in *Waseem Ahmed v. Federation of Pakistan* (2014 PTD 1733), this output-input adjustment is fundamental in determining the tax fraud of overstating entitlement to tax credit or tax refund.

6. While the investigation is that the supplies made by Badami Brothers to Nasif (Pvt.) Ltd. were from purchases made from ENAR Petroleum, the fraud in claiming input tax on those purchase has yet to be established. On the one hand, the final challan states that those purchases were made by Badami Brothers via bank deposits; and on the other hand it is alleged that those purchases were actually made by unregistered persons and invoices were fabricated with registered persons presumably to generate input tax. Apparently, only of the two scenarios can be true in a single transaction. It may well be that genuine invoices are mingled with fraudulent invoices, but again, that too is something that has yet to be ascertained.

7. Thus far, there is also no determination in any departmental proceedings by the Inland Revenue to hold that the Applicant has claimed input tax credit or refund which was not admissible to him. (This is of course not to say that absence of such proceedings per se becomes a ground for bail).

8. Of the offences alleged, only the offences falling under clauses 5, 11(c), 13 and 18 of section 33 of the Sales Tax Act fall within the jurisdiction of the Special Judge (Customs, Taxation & Anti-Smuggling). It is not alleged that the Applicant has failed to deposit tax despite notice by an officer of Inland Revenue so as to trigger the offence under clause 5. The punishment of imprisonment under clauses 11c and 15 may or may not follow in addition to fine. The offence under clause 18 attracts to an officer of Inland Revenue and not to the Applicant. In any case, none of the offences alleged against the Applicant fall within the prohibitory clause of section 497 CrPC.

9. Custody of the Applicant is no longer required for investigation. The evidence is documentary and in custody of the DG I&I-IR. There is no chance of its tampering by the Applicant. It is also not alleged that he is a flight risk.

10. In the totality of the aforesaid circumstances, the case against the Applicant is one of further inquiry falling within the ambit of sub-section (2) of section 497 CrPC.

11. For the foregoing reasons the Applicant Hassan Ali Badami is granted post-arrest bail in FIR No. 04/2023 subject to furnishing solvent surety in the sum of Rs.1,000,000/- (Rupees One Million only) and P.R. Bond in like amount to the satisfaction of the trial court.

Needless to state that the observations above are tentative and shall not be construed to prejudice the case of either side at trial.

**JUDGE**

\*PA/SADAM