

# THE HIGH COURT OF SINDH KARACHI

## Spl. Cr. Bail Application No. 40 of 2024

### For hearing of Bail Application.

Applicant/ Accused : Yasir Latif son of Muhammad Latif through Mr. Aqil Ahmed, Advocate.

Complainant/State : Through Mr. Zulfiqar Ali Arain, Special Prosecutor.

Date of hearing : 23-05-2024

Date of order : 23-05-2024

FIR No. 02/2023/ST/Misbah/Ent.  
2020-23 dated 19-09-2023  
U/s: 2(3), 7, 8(1)(a), 8(1)(d), 8A, 8B(1),  
22, 23, 26 & 73 of STA, 1990  
Punishable u/s 37A of the STA, 1990  
P.S. Deputy Commissioner, IR Unit-II, Range-A  
Zone-II, Hyderabad.

## ORDER

**Adnan Iqbal Chaudhry J.** - The Applicant seeks post-arrest bail in the aforesaid crime after it has been denied by the Special Judge (Customs, Taxation & Anti-Smuggling) Karachi *vide* order dated 03-04-2024.

2. The aforesaid FIR, lodged on 19-09-2023, was against Waseem Ahmed as proprietor of M/s. Misbah Enterprises who registered himself for sales tax at RTO Peshawar in 2016 but subsequently transferred his registration to RTO Hyderabad in 2020 as an importer/distributor. It was alleged that for the period April 2021 to November 2022 his sales tax returns were abnormal. An audit revealed that he had never imported or exported goods, nor acted as a distributor, and yet he had declared huge domestic purchases and supplies involving a fantastic quantum of input and output tax without paying any sales tax; and hence he was booked for tax fraud for claiming input tax on the basis of fake invoices and for issuing fake/flying invoices. As investigation progressed, other persons found involved in the supply chain were implicated.

3. The investigation into the uploading of on-line sales tax returns led to a house in Rawalpindi which was rented during some time by one Muhammad Kashif Ashfaq [**Kashif**] and the Applicant Yasir Latif with a DSL connection registered in the name of one Zahoor-ul-Haq but with the cell number of Kashif. Both Kashif and the Applicant were then employed with the Pakistan Revenue Automation (Pvt.) Ltd. [**PRAL**] at Islamabad. Kashif stated that he left the rented house to the Applicant after switching jobs, and that it was the Applicant who was using the DSL connection. The Applicant was therefore arrayed as an absconder in the 3<sup>rd</sup> interim challan dated 21-02-2024 and subsequently arrested.

4. Heard the learned counsel and perused the record.

5. In the 4<sup>th</sup> interim challan dated 22-04-2024, it is alleged that on interrogation the Applicant admitted his role in the alleged sales tax fraud *viz.* that given his experience at PRAL, he was engaged by different persons for searching PRAL's database for companies/units registered for sales tax but which had become inactive, so as to generate a new password for their activation and to use their registration for making fake sales tax invoices and filing fake sales tax returns. However, as point out by learned counsel for the Applicant, the persons who had allegedly engaged the Applicant for said tax fraud, have yet to be arrested and interrogated, and till such time the extra-judicial confession of the Applicant cannot be used against him.

5. The learned Prosecutor placed on the record a judicial confession of the Applicant recorded under section 164 CrPC before a Magistrate in a similar crime (FIR No. 01/2023). But then, learned counsel for the Applicant has also placed on record order dated 18-12-2023 whereby the trial court granted bail to the Applicant in that case. Be that as it may, the said confession does not seem to be a confession for the instant crime. Even though both crimes appear to be similar, a confession of one does not *ipso facto* become a confession of the other.

It may well be that after confession of the first crime, the Applicant was roped in for the other crime as well. In such circumstances, it is for the trial court to examine what evidentiary value can be placed on said confession.

6. From the 4<sup>th</sup> challan it appears that to arraign the Applicant the prosecution has lumped together separate crimes by different entities, and has lost sight of the fact that the instant FIR relates to the tax fraud connected only to Waseem Ahmed of M/s. Misbah Enterprises, and that too for the period between April 2021 and November 2022.

7. Kashif's statement recorded in the 2<sup>nd</sup> and 3<sup>rd</sup> interim challans appears to be contradictory. On the one hand he states that it could only be the Applicant who was responsible for the alleged on-line tax fraud, and on the other hand he states that he had no knowledge of the internet activities of the Applicant. The investigation reports thus far also do not disclose the exact period during which the Applicant stayed at the Rawalpindi house, the place suspected of the alleged crime. There is also no investigation of the logging activity of the Applicant to access PRAL's data-base during the relevant time. Therefore, the case against the Applicant requires further inquiry and falls within the ambit of sub-section (2) of section 497 CrPC.

8. Of the offences alleged against the Applicant, the offence under section 33(11) of the Sales Tax Act is punishable by a maximum imprisonment of 3 years 'or' with fine; and the offence under section 33(13), by a maximum imprisonment of 5 year 'or' with fine. Thus, while imprisonment may or may not follow, none of the offences fall within the prohibitory clause of section 497 CrPC.

9. Custody of the Applicant is no longer required for investigation, and it is not alleged that he is a flight risk. In the given circumstances, bail cannot be withheld as punishment.

10. For the foregoing reasons, the Applicant Yasir Latif is granted post-arrest bail in FIR No. 02/2023 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**

*SHABAN\**