

# THE HIGH COURT OF SINDH KARACHI

## Spl. Cr. Bail Application No. 80 of 2024

### For hearing of Bail Application.

Applicants/ Accused : Muhammad Qasim son of Abdul Hafeez Gabol and Hotchand son of Ameer Singh, through Mr. Aqil Ahmed, Advocate.

The State : Through Ms. Fouzia Rasheed, Special Prosecutor Customs alongwith I.O. namely; Zubair Ranjha, who is present in Court.

Date of hearing : 30-08-2024

Date of order : 30-08-2024

*FIR No. ASO -637/2024-HQ  
u/s: 2(s), 15, 16, 17, 178, 187, of the Customs Act, 1969  
punishable under clauses (8),(e)(i) & (89) of section 156(1) ibid  
P.S. Collectorate of Customs Enforcement, Karachi.*

## ORDER

**Adnan Iqbal Chaudhry J.** - The Applicants seek post-arrest bail in the aforesaid crime after the same has been declined by the Special Judge (Customs, Taxation & Anti-Smuggling) Karachi by order dated 22-07-2024.

2. The facts narrated in the FIR are that a substantial quantity of "banned, foreign-origin, smuggled" 'Boostin Plus Injections' were seized from the vehicle intercepted and being driven by the Applicant No.1; that another quantity of such injections were seized on a raid at the flat of the Applicant No.1, and where the Applicant No.2 was also arrested as partner of the Applicant No.1; that on the pointation of the Applicant No.2 another quantity of such injections were seized from another flat; that in all, 4575 Boostin Plus Injections were seized along with sale proceeds of Rs. 2,340,000/-; that since such injections had been banned by the Supreme Court of Pakistan by order dated 06-01-2018 passed in C.P. No. 2374-L of 2016. The Applicants were thus booked for the offence of smuggling as defined in section 2(s) of the Customs Act, punishable under clauses 8 and 89 of section 156(1) of said Act.

3. Heard learned counsel for the Applicant and the Special Prosecutor for Customs.

4. Apparently, Boostin Plus Injections are administered to cows/buffalos for enhancing their capacity to produce milk, and due to its hazardous effect on the quality of milk so produced, the Supreme Court of Pakistan had placed a ban upon the import, manufacture and sale of such injections. However, despite the order of the Supreme Court, the Federal Government has not bothered to include Boostin Plus Injections in the list of smuggled goods notified under section 2(s) of the Customs Act *viz.* SRO No.556(I)/2005 dated 06-06-2005, nor in Appendix-A of the Import Policy Order which is the negative list of banned items. While such inaction of the Federal Government is deplorable, that aspect can best be examined in writ jurisdiction.

5. At present, since Boostin Plus Injections are not notified under section 2(s) of the Customs Act, the offence of smuggling, and consequently the punishment prescribed in clauses 8 and 89 of section 156(1) of said Act do not seem to be attracted. Reliance can be placed on the cases of *Shabbir Ahmed Shah v. Pakistan* (1980 PCrLJ 349) and *Hiam Tabbara v. Director-General, Pakistan Coast Guards* (PLD 1980 Karachi 44).

6. There is force in the submission of the Applicants' counsel that in the given circumstances the only provisions of section 156(1) of the Customs Act that could be attracted are clauses 9 and 90 thereof where the offence entails only confiscation of the offending goods and penalty, not imprisonment, and resultantly such offence would not fall within the domain of the Special Judge.

7. There is another aspect of the matter. While the FIR and challan allege that the Boostin Injections seized were of '*foreign-origin*', thus far that is not substantiated by any photograph of the packing of those injections.

8. For the foregoing reasons, there are reasonable grounds for believing that the Applicants may not be guilty of the offences alleged against them. The custody of the Applicants is no longer required for investigation. Consequently, the Applicants, Muhammad Qasim and Hotchand are granted bail in FIR No. ASO-637/2024-HQ subject to furnishing solvent surety in the sum of Rs. 500,000/- (Rupees Five Hundred Thousand only) each alongwith 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\**