# ORDER SHEET IN THE HIGH COURT OF SINDH AT KARACHI

#### CR. BAIL APPLICATION NO.751/2023

Date	Order with signature of Judge

For hearing of bail application.

## 24.07.2023

Mr. Muhammad Kamran Baloch advocate for applicant in BA No.751/2023. Mr. Ghulam Mujtaba Sahito, Special Prosecutor, Customs.

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**SALAHUDDIN PANHWAR, J**: Applicant has approached this Court for grant of bail after such relief was declined to him by trial Court in sought in FIR No.ASO-164/2022-HQ under section 6/9-C read with sections 14/15 of the CNS Act 1997 registered at PS Customs, Karachi.

2. Concisely, relevant facts are that on 03.10.2022 Pakistan Maritime Security Agency (PMSA) officers intimated the customs officials that they have successfully completed an operation in high sea, recovering contraband crystal (wet) methamphetamine weighing 7.5 KGs from a fishing boat and apprehended eight crewmembers, therefore Complainant PO Imran Maqsood alongwith other customs officials reached at PMSA office at about 1630 hours where PMSA officials handed over custody of eight crewmembers namely (1) Waheed *(present applicant/accused)* (ii) Pervez, (iii) Khair Bakhsh, (iv) Noor Mohammad, (v) Shahzaib, (vi) Aslam, (vii) Abdul Sattar and (viii) Shabbir and contraband methamphetamine lying in seven plastic boxes. After following required formalities Complainant brought the accused persons alongwith recovered contraband at ASO HQ where present FIR was lodged. 3. Learned counsel for applicant contends that boat of applicant got fire and totally burnt, coast guards rescued them and handed over to custom authorities after saving their lives however custom authorities with malafide intention booked the applicant and others in heinous crime without any reason. It is contended that since boat was burnt then how the case property could remain save and could be recovered; that it is unbelievable that when contraband was in wet condition how it did not dissolved in salty water; that there is violation of section 103 CrPC as no private witness was associate while recovery proceedings; that applicant has been remanded to judicial custody and is no more required for further investigation; that applicant has no previous criminal record; that no any specific role has been assigned to him.

4. On the contrary, learned Special Prosecutor, Customs argued that applicant alongwith other accused persons were apprehended by the officers of PMSA and 7.5 KGs of Ice methamphetamine was recovered; question of associating private witnesses in such cases does not arise, that case of applicant falls within the prohibitory clause hence bail application is liable to be dismissed.

5. Learned counsel for applicant has himself produced photographs of subject boat and recovery efforts being undertaken by PMSA; these photographs themselves show that still there were some portions of boat that did not get fire, so his contention that all contrabands would have burnt after boat caught fire, is without force. Further his contention that boat sank and contraband could not be recovered as they may have dissolved in salty water is also without force as according to prosecution recovered contrabands were packed in plastic boxes. Since recovery was made in open sea hence association of private witness is out of question; even otherwise section 25 of the CNS Act, 1997 exempts the provisions of section 103 Cr.P.C. Applicant has failed to demonstrate any reason/enmity of officials of PMSA with him to allegedly involve him in present case; offence falls within the prohibitory clause and section 51 of the CNS Act 1997 bars grant of bail where the offence is punishable with death/life imprisonment. Hence bail application is dismissed.

These tentative assessments will not affect merits of the case at trial.

### JUDGE

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# ORDER SHEET IN THE HIGH COURT OF SINDH AT KARACHI

### CR. BAIL APPLICATION NO.87/2023

Date Order with signature of Judge

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For hearing of bail application.

#### 24.07.2023

Mr. Javed Ahmed Sher advocate for applicants in BA No.87/2023 Mr. Ghulam Mujtaba Sahito, Special Prosecutor, Customs.

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**SALAHUDDIN PANHWAR, J**: Applicants/accused Ali Bukhsh, Muhammad Alim, Nabi Bukhsh and Zubair Ahmed have approached this Court for grant of post-arrest bail after such relief was refused to them by trial Court in connection with FIR No.ASO-163/2022-HQ under section 6, 7, 8, 14, 15 & 9(c) of the CNS Act, 1997 lodged at PS Customs, Karachi.

2. Prosecution's case is that on 03.10.2022 the PMSA officials intimated the customs officials that after completion of a successful operation in high seas they recovered contraband hashish and apprehended four occupants from a stateless fishing boat; complainant PO Mohammad Saqlain alongwith other customs officials reached at PMSA office at about 1530 hours where Chief Intelligence Officer, PMSA handed over custody of four crewmember, *applicants herein*, and contraband chars consisting 28 packets weighing 28 Kilograms; accused and recovered contraband were brought at PS ASO-HQ; FIR was registered.

3. Learned counsel for applicants argued that applicants have been falsely implicated; that FIR terms the boat as stateless however in charge sheet it is named as 'Al-Omar Farooq' boat; that alleged incident is shown to have happened on 27.09.2022 when subject boat was taken into customs' possession but surpassingly an

FIR No.549/2022 under sections 3 and 9 of the Fishery Act was registered on 02.10.2022 at PS Docks by Complainant Lieutenant Mohammad Sujawal posted at PMSA and in that connection one Jameel Ahmed has made an application under section 516-A Cr.PC before concerned Judicial Magistrate for release of said boat i.e. Al-Omar Farooq boat. It is furthered contended that facts are contradictory because in paragraph No.9 of the challan it is mentioned that boat got fire hence identification documents and mobile phones were destroyed, but fact is that it was not Al-Omar Farooq boat but another stateless boat had caught fire regarding which FIR No.ASO-164/HQ was registered; that it is alleged that applicant/accused persons were smuggling 28 KGs Chars from Iran to Yemen which collapses entire prosecution case as the expenses from Iran to Yemen on such boat would be not less than five millions rupees however in FIR it is alleged that each applicant was paid Rs.15,000/- for the journey; that actually Al-Omar Farooq boat went out of order in Pakistani territorial waters and in order to bright it on the shores another boat Al-Qamar Farooq sailed to tow the subject boat; that neither any such incident as alleged by prosecution has taken place nor alleged recovery was affected, same was foisted upon the accused persons with malafide intention.

4. On the contrary, learned Special Prosecutor, Customs argued that admittedly four accused persons were arrested from subject boat by PMSA and from their possession 28 packets of Charas weighing 28 KGs were recovered; that boat was flagless however accused named it as Al-Omar Farooq which could not be verified; that there is no enmity of complainant party with accused persons; hence bail is liable to be dismissed.

5. Contention that in FIR boat was shown as stateless and in challan named as Al-Omar Farooq boat; is contrary to the record as interim challan itself shows it to be stateless fishing wooden boat (Un-named and bearing registration No.Nil) as well paragraph No.9 of challan shows that Nabi Bukhsh was nakhuda of that boat and this accused person claimed the boat to be registered under name of Al-Omar Farooq with Registration No.16258. However the fact is that the boat was flagless, unnamed and devoid of any registration number painted on that boat. Further applicants tried to confuse their boat with another boat that is mentioned in FIR No.549/2022 however they failed to show any connection between the two boats.

6. Questions that whether or not smuggling on such like boats from Iran to Yamen costs more than five million rupees while applicants were hired for Rs.15,000/- each for smuggling of subject contrabands and that actually Al-Omar Farooq boat got issue in its engine in Pakistani territorial waters and in order to bring it on the shores another boat Al-Qamar Farooq sailed to tow it; are the questions that fall within the ambit of deeper appreciation which is not available at bail stage.

7. In the case reported as <u>Muhammad Noman Munir vs. The</u> <u>State and another</u> (2020 SCMR 1257), honourable Apex Court declined bail to an accused from whom 1380 grams of cannabis with 7 grams of heroin was recovered by the police officials, however in the present case, from the possession of the applicants 28 KGs charas was recovered by the officers of PMSA, the contention of learned counsel for the applicant that charas was foisted upon them is a matter which could only be dealt with after recording evidence; it is 8. With regard to alleged false involvement of applicants due any enmity the officers of PMSA or officers of Anti-/Smuggling Organization, Customs, is a question which can only be determined at the time of trial and not at this stage; thus, tentative assessment of material available on record, *prima facie* leads to a conclusion that there no *reasonable grounds* exist to believe that it is a case of further enquiry. As per section 51 of the CNS Act, 1997 there is bar for grant of bail where offence is punishment for life. For above reasons, this bail application is hereby dismissed. Since these are tentative assessments hence will not affect merits of the case at trial.

JUDGE

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