

# THE HIGH COURT OF SINDH, KARACHI

## Spl. Cr. Bail Appl. No. 24 of 2024

For Applicants : Muhammad Usman Tanveer son of Tanveer Shoukat and Irfan son of Akbar Khan through Mr. Shah Muhammad Zaman Junejo, Advocate.

The State : Mr. Ashiq Ali Anwar Rana, Special Prosecutor Customs; Ms. Rabia Khalid, Assistant Attorney General for Pakistan; and I.O. Ilyas Gichki.

Date of hearing : 08-04-2024

Date of order : 08-04-2024

*FIR No. M-4070/DCI/Seiz/2024  
u/s: 2(s), 16, 157(1) & 178 of the Customs  
Act, 1969, punishable under clauses (8) & (89)  
of sub-section (1) r/w sub-section (2) of  
section 156 & section 157(2) of the Act, ibid  
P.S. Directorate General I & I-Customs, Karachi*

## ORDER

**Adnan Iqbal Chaudhry J.** - The Applicants seek post-arrest bail in the aforesaid crime after the same was declined by the Special Judge (Customs, Taxation & Anti-Smuggling), Karachi vide common order dated 19.02.2024.

2. As per the FIR and mashirnama, on 24.01.2024 at 03:00 hours, on a tip-off, the Anti-Smuggling Unit of the Directorate of Intelligence & Investigation-Customs conducted a search under section 163 of the Customs Act at a warehouse at the Industrial Zone, Port Qasim Authority, to find a 174 feet long tunnel under the warehouse leading to a section of PARCO's White Oil Pipeline where a connection was improvised to extract/steal non-custom paid diesel, which was then being filled in a container and two trucks *via* a pipe. The warehouse was found in the possession of the co-accused Vijaish Kumar as tenant thereof, and all other accused persons including the Applicants

were alleged to be involved in the illegal activity. All of them were arrested from the spot. The container and trucks were seized with the stolen diesel which weighed at 58,667 liters and valued at Rs. 44,966,108/-.

3. Heard the learned counsel and perused the record.

4. As per the I.O., the White Oil Pipeline of PARCO from which diesel was being stolen, runs from Karachi to Muzaffargarh and is used for safe transshipment of imported diesel to other customs stations where customs duty is paid for clearance by the importing Oil Marketing Companies. In other words, the Applicants and the co-accused persons have been booked for “en-route pilferage of transit goods”, an act which appears to be covered by the definition of ‘smuggle’ in section 2(s) of the Customs Act *albeit* the punishment specifically prescribed for such offence is in clause 63(i) of section 156(1) of the Customs Act, being imprisonment for a term which may extend to seven years.

5. As per the interim challan, the investigation thus far has revealed that the pilferage operation was devised by the absconding accused Lutif Siyal and his brother Mir Murtaza; that in collaboration with them, the warehouse was taken on rent by Vijaish Kumar and mustard-oil-extracting machines were installed to give cover to the pilferage operation; that during the day-time, the warehouse would be used as a mustard-oil extraction mill, and at night-time a team of laborers brought in by Lutif Siyal and Mir Murtaza would dig the tunnel to the White Oil Pipeline; that the tunnel was done in 15-20 days, whereafter they started extracting the diesel from the Pipeline; that the stolen diesel was filled into container trucks and escorted to a godown where it was delivered/sold to the absconding accused Haji Aziz.

6. The interim challan assigns separate roles to the accused persons. While assessing the role of each accused person, this Court

had, by order dated 14-03-2024, granted bail to some of them while declining it to the co-accused Attaullah on the ground that he had been assigned a direct role in the pilferage operation as the person who escorted the vehicles loaded with the stolen diesel for delivery to the buyer. However, as per the copy of order dated 04-04-2024 passed in Criminal Petition No. 35-K/2024, even Attaullah has been granted bail by the Supreme Court after observing that:

“It is not the case of the prosecution at this stage that the petitioner was found stealing or pilfering the POL but he was attributed the role of pilot. Whether he is involved directly or vicariously or with the group of persons with common intention to commit the crime of the alleged smuggling is something that cannot be decided without recording evidence to prove his guilt, and in our considered view, requires further inquiry.”

7. The case of the Applicants appears to be on a better footing than the case of the co-accused Attaullah, inasmuch as the Applicant Usman is alleged to be the driver of one of the trucks used for transporting the stolen diesel in a concealed tank, and that the Applicant Irfan is alleged to be the loader and cleaner of the other truck used for the same purpose. Therefore, the case against the Applicants too is of further inquiry and both are become entitled to bail also on the rule of consistency.

8. For the foregoing reasons, bail is granted to Muhammad Usman Tanveer and Irfan in FIR No. M-4070/DCI/Seiz/2024 subject to furnishing solvent surety in the sum of Rs. 100,000/- (Rupees One Hundred Thousand only) each, along with P.R. Bond in like amount to the satisfaction of the Nazir of this Court.

Needless to state that observations herein are tentative and nothing shall be construed to prejudice the case of either side at trial.

**JUDGE**

\*PA/SADAM