

# THE HIGH COURT OF SINDH KARACHI

## Spl. Cr. Bail Application No. 32 of 2024

### For hearing of Bail Application.

Applicant/ Accused : Rab Nawaz son of Allah Nawaz through Mr. Shamail Sikander, Advocate.

State : Directorate General Post Clearance Audit (South), through Mr. Farooq Hashmat, Advocate.

Ms. Rabia Khalid, Assistant Attorney General for Pakistan.

Date of hearing : 08-04-2024

Date of short order : 08-04-2024

Date of reasons : 15-04-2024

FIR No. 10 of 2023  
u/s: 32A, 26A and 26B r/w Ss. 187 & 192  
of the Customs Act, 1969, punishable under clauses  
(12A), (12B) and (14A) of Section 156(1) r/w Ss. 3(5),  
6 and 2(37) of the Sales Tax Act, 1990 &  
Section 148 of the Income Tax Ordinance, 2001  
PS: Directorate of Post Clearance (Audit) South, Karachi

## **ORDER**

**Adnan Iqbal Chaudhry J.** - By short order dated 08-04-2024, post-arrest bail was granted to the Applicant in the aforesaid crime. These are reasons for the same.

2. The FIR lodged on 21.12.2023 was against the proprietor of Hamza Enterprises, its representative, partners and associates, alleging fiscal fraud under section 32A of the Customs Act, 1969 and other offences punishable under said Act as summarized in para 1 of the FIR as follows:

*"In pursuance of sectoral audit of solar panel imports assigned by FBR the Directorate of Post Clearance Audit (South), Karachi has unearthed a cartel of fictitious that is associated in various illegal operations to clear solar*

*panels by adding multiple business names on the NTN No. 5217810-6 belonging to M/s. Hamza Enterprises. An entity-based audit was accordingly initiated of M/s. Hamza Enterprises which led to the detection of serious violations including misuse of green channel, physical non-existence, fraudulent edition of various business names on the NTN/Customs User ID to clear solar panels illegally, deletion of business names from NTN/Customs User ID after illegal clearance of solar panel to hide the crime, fraudulent clearance of solar panels on false/forged Financial Instruments (FI) by way of illegal use of open account, use of illicit funds to finance imports not commensurate with financial worth involving TBML, misuse of manufacturing status to evade duty/taxes, obstruction to audit through non-production of records and violation of summon notice by non-appearance to substantiate genuineness of ownership."*

3. To preempt the fiscal fraud, GDs filed with the NTN of Hamza Enterprises were blocked for clearance. At that point, out of 18 GDs pending clearance with the NTN of Hamza Enterprises, 5 GDs were found to be filed by Solar Sight (Pvt.) Ltd. Per the FIR, a scrutiny of the import data revealed that from 02-10-2023 onwards, Solar Sight (Pvt.) Ltd. had used the NTN of Hamza Enterprises to import goods of a declared value of Rs. 2,406,165,540/- which was the payment remitted by it abroad

4. The Applicant, as Director of Bright Star Business Solution (Pvt.) Ltd., was implicated in FIR No. 02/2023 for fiscal fraud with the allegation of over-invoicing imports of solar panels from China. On 01.02.2024, he was arrested in the subject FIR No. 10/2023. As per the interim challan dated 21.12.2023, the clearing and forwarding agent under investigation in FIR No. 02/2023, namely Muhammad Raza and Muhammad Noshad, had given statements that it was the Applicant who gave them documents to file GDs for Solar Sight (Pvt.) Ltd. This led the I.O. of the subject FIR to conclude that the Applicant was behind Solar Sight (Pvt.) Ltd. which had filed GDs using the NTN of Hamza Enterprises.

5. Per the Prosecutor, the Applicant had remitted substantial payments abroad under the garb of over-invoiced imports of solar panels, and thus it was apparent that he was involved in money laundering. On the other hand, learned counsel for the Applicant

submitted that the entire case against him is on the assumption that he was running the affairs of Solar Sight (Pvt.) Ltd., whereas the Applicant has nothing to do with said company.

6. Heard the Applicant's counsel, the Special Prosecutor and the Assistant Attorney General for Pakistan.

7. Apparently, the connection made by the I.O. between the Applicant and Solar Sight (Pvt.) Ltd. is based solely on the alleged statements of the two clearing and forwarding agents recorded under section 161 CrPC during the investigation of FIR No. 02/2023. Even those statements are not on the record. On the other hand, the Applicant has placed on the record company returns of Solar Sight (Pvt.) Ltd. obtained from the Securities and Exchange Commission of Pakistan to show that the Applicant is not a member or director of that company.

8. Therefore, and firstly, the allegation that the Applicant is behind the affairs of Solar Sight (Pvt.) Ltd. has yet to be substantiated. Secondly, even if that is proved, there remains the question whether the use of Hamza Enterprises' NTN by the Applicant to import goods was intended to or resulted in evasion of customs duty and taxes so as to attract section 32A of the Customs Act. As regards the violation of sections 26A and 26B of the Customs Act and offences punishable under clauses (12A) and (12B) of section 156(1) of said Act, the interim challan does not allege those against the Applicant.

9. The submission of the Prosecutor was that the Applicant was behind over-invoicing of solar panels with the aim of laundering money abroad. However, that is the allegation in FIR No.02/2023, not the subject FIR.

10. Therefore, at present, there are no reasonable grounds for believing that the Applicant committed any of the offences alleged in

the instant FIR. The case against him is clearly one of further inquiry, and thus a case within the ambit of sub-section (2) of section 497 CrPC. His custody is no longer required for investigation.

11. For the foregoing reasons, the Applicant Rab Nawaz was granted post-arrest bail in FIR No. 10/2023.

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

\*PA/SADAM

**JUDGE**