

THE HIGH COURT OF SINDH KARACHI

Spl. Cr. Bail Application No. 180 of 2024

Applicant/Accused : Hasnain Raza son of Raza Hussain through Mr. Aqeel Ahmed, Advocate.

Complainant/State : Through Mr. Ashiq Ali Anwar Rana, Special Prosecutor Customs and Ms. Rabia Khalid, Asst. Attorney General for Pakistan.

Date of hearing : 16-01-2015

Date of order : 16-01-2015

*Case No. P-5899/2024 dated 22.11.2024
U/S: 2(s), 16, 17 & 139 punishable under
clause (8)(i), 46, 48 of Section 146 of the
Customs Act, 1969
P.S. Collectorate of Customs Airport, Karachi*

ORDER

Adnan Iqbal Chaudhry J. - The Applicant seeks post-arrest bail in the aforesaid crime after the same has been declined by the Special Judge (Customs, Taxation & Anti-Smuggling-I), Karachi by order dated 07.12.2024.

2. As per FIR, the Applicant and his wife (co-accused) arrived at Jinnah International Airport Karachi via a flight from the UAE on 22.11.2024 when they were intercepted at 2:25 a.m. while attempting to use the Green Channel where they were stopped and asked if they had any goods to declare, which they declined; that a scan of their baggage revealed dutiable goods including new iPhones, laptops and microprocessors; that a search of their person revealed 8 new iPhones carried by the wife, and 2 new iPhones and 9 microprocessors carried by the Applicant; that goods were valued at Rs. 6,080,000/- and liable to duty/taxes amounting to Rs. 2,585,153/; therefore, the Applicant and his wife were arrested and booked for the offence of smuggling as defined in section 2(s) of the Customs Act, 1969 as punishable under clause 8(i)(b) of section 156(1) of said Act. The Applicant's wife

(co-accused) was granted bail by the Special Judge on the consideration that was a woman.

3. Learned counsel for the Applicant submits that he and the co-accused had intended to declare the goods before the Green Channel but they were intercepted by customs officers before they could do so. The learned Prosecutor denies that and submits that the Applicant and the co-accused were intercepted while they were trying to use the Green Channel and after they declined to make any declaration.

4. Heard learned counsel for the Applicant, Special Prosecutor Customs, learned Assistant Attorney General for Pakistan and perused the record.

5. Apparently, the goods seized are not prohibited but only restricted items. The goods were not hidden in any secret cavity of the luggage nor carried by the Applicant on his person in a concealed manner. Under section 139 of the Customs Act, a passenger bringing in baggage can also make a verbal declaration of its contents for clearing it through customs. Therefore, in such circumstances, the submission that the Applicant intended to declare the goods but was intercepted before he could do so, cannot be ruled out at this stage. As observed in the case of *Ferozur Rahman Batla v. The State* (1980 PCrLJ 663), a passenger must be given an opportunity to make a declaration. Whether the Applicant was given such an opportunity, remains a question of fact yet to be ascertained, thus making this a case of further inquiry.

6. The offence under clause 8(i)(b) of section 156(1) of the Customs Act attracts a maximum imprisonment of three years and therefore does not fall within the prohibitory clause of section 497 Cr.P.C. In such cases, bail is the rule and its refusal the exception.

7. For the foregoing reasons, the Applicant namely Hasnain Raza son of Raza Hussain is granted bail in the aforesaid FIR subject to furnishing solvent surety in the sum of **Rs.400,000/- [Rupees Four Hundred Thousand only]** alongwith P.R. Bond in like amount to the satisfaction of the trial Court.

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

PA/SADAM

JUDGE