

**IN THE HIGH COURT OF SINDH AT KARACHI**

**SPL. CR. BAIL APPLICATION NO.9/2015**

**PRESENT: MR. JUSTICE SALAHUDDIN PANHWAR**

Applicant : Arshad Ali Khan s/o Sher Ali Khan,  
through M/s. Iftikhar Hussain and Sher Ali Rizvi,  
advocates.

Respondent : The State,  
through Syed Mohsin Imam, advocate for  
Directorate of Intelligence & Investigation (Inland  
Revenue),  
Mr. Muhammad Jawed K.K., Standing Counsel.

Date of hearing : 18.05.2015.

Date of announcement : 25.05.2015.

**ORDER**

By the dint of this order, I intend to decide instant Special Cr. Bail Application wherein applicant seeks post arrest bail in Crime No.ST/DD-B/01/214-15/24, u/s 26 and 73 of the Sales Tax Act, 1990.

2. Relevant facts are that on receipt of information from Directorate of Intelligence and Investigations-IR, HQ Islamabad, regarding registered persons involved in issuance of fake/flying invoices for illegal input tax adjustments, complainant proceeded against M/s. Kotila Corporation involved in generation and issuance of fake sales tax invoices to several registered persons and getting benefit of millions of rupees and caused loss to government exchequer; thus applicant/accused was arrested on allegation of swindling and evading of tax payment and running of his office in the name of M/s. Kotila Corporation which was earlier registered with the

Department and subsequently on expiry of its director they moved application for cancelation of registration before I.T. Department and inspite of such application; since 2011 the I.T. Department received statement continuously by using ID and password of defunct M/s. Kotila Corporation.

3. Heard learned counsel and Special Prosecutor, perused the record.

4. Learned counsel for applicant inter alia has argued that applicant is rightly and legitimately claiming himself as proprietor of M/s. Kotila Corporation (unregistered) situated on D-91, Block B, North Nazimabad, Karachi, but has never claimed himself to be proprietor of M/s. Kotila Corporation (registered for sales tax) which is located at 106, Windsongs Palace, KCHS Plot No.A-16-17, Block 7, Karachi and/or located at 66 B-1, Khayaban-e-Behria, Phase VII, DHA Karachi, neither he has any concern with said firm; candidly late Muhammad Noor Muhammad was owner of M/s. Kotila Corporation who had expired in February 2007 as intimated through letter dated 08.06.2008 to Sales Tax Department but concerned officials of Sales Tax Department malafidely had canceled the sales tax registration of said M/s. Kotila Corporation; that user ID and password for filing of sales tax returns can only be issued to registered tax payer with confidential mode of communication thus can not be used except them; that alleged penal provision of section 33(11) and (12) of Sales Tax Act 190 based on amount of tax involved; that sales tax is a fiscal law and levy of tax is a civil obligation and every short payment or non payment of tax is not a crime but a civil obligation; that offence does not fall within the prohibitory clause of section 497 Cr.P.C. and applicant is no more required for investigation, thus applicant may be granted bail. He has relied upon

PLD 1997 Supreme Court 545, 2010 SCMR 1835, 2014 PTD 1807, 2014 PTD 1733 and 2011 PTD 2714, orders passed by Honorable apex Court in Civil Petitions No.1798 to 2024 of 2014, Orders passed in Spl. Cr. Bail Application Nos.35/2012, 101/2012, 17/2013 and order passed in CPNo.D-537/2013.

5. Learned counsel for the Directorate of Intelligence and Investigations as well learned State Counsel vehemently opposed grant of bail to applicant. Learned counsel for the Directorate has contended that according to section 2(3) of Sales Tax Act burden heavily lies on the accused to prove that he is not tax evader; that the applicant continued the business in the name of defunct M/s. Kotila Corporation who after death of its proprietor was non functional since the year 2008 and applicant under the garb of that corporation, is evading tax though he is liable to pay the tax; that applicant's bank account also shows a flow of deposit of cheques in connection with his business inspite of that he failed to deposit the tax therefore he is not entitled for any concession of bail. He placed reliance on PTCL 2007 CL 400 and PLD 1997 Supreme Court 545.

6. It needs not be reiterated that mere non-filing of an offence within meaning and object of Section 497(i) Cr.PC would not earn a **'right'** to an accused for his release on bail but the requirement of law demands legal justification for releasing an accused which may either be a case falling within **'further inquiry'** or other legal justification within satisfaction of judicial conscious of the Court. It is matter of record that applicant is running factory in the name of M/s. Kotila Corporation which is manufacturing the goods but without payment of sales tax. Such act has not been claimed to be unconscious hence it can safely be presumed that applicant / accused deliberate committed an act which, *undeniably*,

is recognized by law as a **crime** or **offence** under Sales Tax Act. Further, it was revealed that sales tax invoices were issued to known business concern namely M/s Packages Ltd, Lahore “STRN 0306490000382” during the period from July 2011 to June 2012 and they made payments to M/s. Kotila Corporation through bank channel and verified from corresponding buyer’s bank reveals that 34 cheques worth Rs.86.077 million were issued by packages Ltd to M/s. Kotila Corporation. All these circumstances therefore show that present applicant is admittedly running his business in the name of M/s. Kotila Corporation which not only generating the products but also sending the goods to M/s. Packages Ltd at Lahore; about 34 cheques issued by M/s. Packages Ltd were received; deposited in NIB bank from where he withdrew the proceeds of those cheques in the sum of Rs.86.077 million. It is not disputed that applicant has not paid any sales tax for the reason that they are not registered with Sales Tax Department. The said allegations against him also show that they in order to avoid the payment of sales tax are using the name of M/s. Kotila Corporation though same is not in existence. This is sufficient to *prima facie* establish that applicant has been using the name of M/s Kotila Corporation although the applicant / accused himself does not deny the status of such corporation to have been non-functional. It is worth to mention here that registration of a corporation and its becoming non-functional is not given wide publication rather remains between the **corporation** and department. The applicant / accused cannot escape such fact only by taking the plea of running a non-registered corporation under same name. Needless to add that it is always the name and good-will of a **‘name’** (corporation e.t.c) which materially works and even is sold in market therefore, such deliberate acts and omissions on part of the

applicants in continuing with business in such manner on the face of it is serious offence. Let me add that an act of evading payment of the Tax, which the law insists, cannot be said to be a **'civil obligation'** particularly when the law itself makes it an **'offence'**. Further, an accused cannot come out with such plea to earn him bail when he has *prima facie* been guilty of deliberate acts and omission costing serious loss / damage to the government. If such pleas are accepted it shall make the law, its object and purpose as **redundant**. The applicant / accused *prima facie* is guilty of an offence of evading the payment of Tax but also an act of generating business under the name of a **'registered corporation'** without having any nexus therewith, hence the applicant / accused has failed to make out a case for bail which *otherwise* was / is required to be established by the applicant / accused within meaning of Section 2(3) of Sales Tax Act.

7. Thus, instant application is dismissed.

Imran/PA

**J U D G E**