

# IN THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Bail Application 114 of 2024

*Junaid Ghouri*

vs.

*The State*

For the Applicant / Accused : Messrs. Muhammad Usman  
and Kamal Mustafa Bukhari,  
Advocates

For the Prosecution / State : Ch. Saeed-uz-Zaman,  
Special Prosecutor Pakistan  
Coast Guards

For the Complainant : Subedar Muhammad Saleem,  
Seizing Officer, Pakistan Coast  
Guards

Date of hearing : 15.10.2024

Date of announcement : 15.10.2024

## ORDER

**Agha Faisal, J.** The applicant seeks post-arrest bail, in respect of F.I.R. 4536 of 2024, registered on 05.09.2024, before P.S. 6 Battalion (Qasim), Pakistan Coast Guards, Gharo, pertaining to offence/s under Section/s 2(s), 16, 156(1)(8) and 157 of the Customs Act, 1969.

2. Learned counsel submits that the earlier plea for bail by the applicant was rejected by the Court of the Special Judge (Customs, Taxation and Anti-Smuggling-I), Karachi in Case No. 4536 of 2024, hence, the present proceedings.

3. After considering the submissions of the learned counsel and sifting<sup>1</sup> through the material placed before the court, for and against the applicant, reproduction whereof is eschewed herein<sup>2</sup>, it is observed as follows:

a. The allegation levelled against the applicant was that he was apprehended driving a truck in which 4200 liters of Iranian /

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<sup>1</sup> *Shoaib Mahmood Butt vs. Iftikhar Ul Haq & Others* reported as 1996 SCMR 1845.

<sup>2</sup> *Chairman NAB vs. Mian Muhammad Nawaz Sharif & Others* reported as PLD 2019 Supreme Court 445; *Muhammad Shakeel vs. The State & Others* reported as PLD 2014 Supreme Court 458.

smuggled diesel was discovered; hence, he is to be tried for smuggling.

- b. Learned counsel pleaded entitlement to the concession of bail on the premise that applicant was merely a driver has no nexus with the consignment; no case was made out presently to connect him with consignment in any other way; while the consignment is alleged to be smuggled diesel, however, no such stipulation is contended in the test report issued by the Hydrocarbon Development Institute of Pakistan, available at page 59 of the court file.

The Prosecution asserted that the applicant was not eligible for the relief sought as the applicant had no documentation justifying the origin of the consignment at the time of arrest. Furthermore, the learned special prosecutor also professed ignorance of the Hydrocarbon Test Report.

- c. The origin of the alleged contraband has not been substantiated by the prosecution as of date. On the contrary the test report lends apparent credence to the applicant's case. Nothing has been placed on record to demonstrate that it was smuggled. The applicant's knowledge and nexus with the alleged contraband also remains to be established.
- d. The alleged offence admittedly does not fall within the prohibitory clause and it is settled law in such matters the grant of bail is the rule<sup>3</sup> and its refusal an exception<sup>4</sup>. The Supreme Court has illumined<sup>5</sup> that in such cases Courts may consider favorably the granting of bail and decline to do so only in exceptional cases. Prosecution has made no effort to articulate if any exception is attracted in the present matter.
- e. Upon tentative<sup>6</sup> assessment of the material<sup>7</sup> collected by the prosecution, for and against the applicant, it is manifest that the case, pertaining to the involvement of the applicant / accused in commission of the alleged offence/s, merits further enquiry<sup>8</sup>, hence, demonstrably qualifying the present matter within the remit of Section 497(2) Cr.P.C. The Supreme Court has maintained that in matters requiring further enquiry, grant of bail is the rule rather than the exception<sup>9</sup>.
- f. In addition to the foregoing, the material placed before the Court does not indicate any criminal record of the applicant, in cases of an identical nature or otherwise; no argument has been articulated requiring the applicant's presence for further investigation at this stage<sup>10</sup> or denoting him as a flight risk; no apprehension has been expressed with regard to tampering of evidence by the applicant or repeating the offence/s, if enlarged

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<sup>3</sup> *Muhammad Tanveer vs. The State & Another* reported as PLD 2017 SC 733.

<sup>4</sup> *Tariq Bashir & Others vs. The State* reported as PLD 1995 Supreme Court 34.

<sup>5</sup> *Zafar Iqbal vs. Muhammad Anwar & Others* reported as 2009 SCMR 1488.

<sup>6</sup> *Shahzaman vs. The State* reported as PLD 1994 Supreme Court 65.

<sup>7</sup> *Asif Ayub vs. The State* reported as 2010 SCMR 1735.

<sup>8</sup> *Awal Khan & Others vs. The State* reported as 2017 SCMR 538.

<sup>9</sup> *Muhammad Shafi vs. The State* reported as 2016 SCMR 1593; *Nisar Ahmed vs. The State* reported as 2014 SCMR 27.

<sup>10</sup> *Riaz Jafar Natiq vs. Muhammad Nadeem Dar & Others* reported as 2011 SCMR 1708.

on bail<sup>11</sup>; hence, no cause is apparent presently warranting the continued incarceration of the applicant *pendente lite*.

4. Therefore, it is the assessment of this Court that the learned counsel for the applicant has made out a fit case for grant of post arrest bail, hence, the applicant is hereby admitted to bail, subject to furnishing solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousand only) and a personal recognizance bond, in the like amount, to the satisfaction of the learned trial Court.

5. It is considered pertinent to record that the observations herein are of tentative nature and shall not influence and / or prejudice the case of either party at trial.

JUDGE

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<sup>11</sup> *Subhan Khan vs. The State* reported as 2002 SCMR 1797.