

IN THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Bail Application 100 of 2024

Niaz Muhammad and another

vs.

The State

For the Applicant / Accused : Messrs. Ghulam Nabi
and Rana Sakhawat Ali,
Advocates

For the Prosecution / State : Ms. Alizeh Bashir
Assistant Attorney General

Mr. Ch. Saeed-uz-Zaman
Special Prosecutor
Pakistan Coast Guards

Date of hearing : 22.10.2024

Date of announcement : 22.10.2024

ORDER

Agha Faisal, J. The applicant seeks post-arrest bail, in respect of F.I.R. 1016 of 2024, registered on 18.08.2024, before P.S. 3 Battalion, Pakistan Coast Guards, Karachi, pertaining to offence/s under Section/s 2(s) and 16, 156(1)(8) (89) 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. 165 of 2024, hence, the present proceedings.

3. After considering the submissions of the learned counsel and sifting¹ through the material placed before the court, for and against the applicant, reproduction whereof is eschewed herein², it is observed as follows:

- a. The allegation levelled against the applicant is smuggling of *Gutka* of Indian Origin.
- b. Learned counsel for the applicant pleaded entitlement to the concession of bail on the premise that there was no recovery

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

² *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.

from the applicant and the content was foisted; there is no report in respect of any alleged contraband being of Indian origin etc.; applicant does not claim any consignment, alleged recovered, and has no nexus therewith.

The Special Prosecutor asserted that the applicant was not eligible for the relief sought. He denied that the contraband was foisted. Upon query as to whether any report with respect to the Indian origin etc. of the alleged contraband has been placed on record, he replied in the negative.

- c. The nature and origin of the alleged recovered contraband has not been determined as of date. Such determination is a primary consideration, irrespective of the allegation of foisting. Literally nothing has been placed on record by the prosecution to corroborate its stance, therefore, reliance for purposes hereof is placed on the record annexed by the applicant.
- d. The Special Prosecutor was queried as how the applicant could be denied the concession of bail in the manifest absence of anything to corroborate the nature and origin of the allegedly recovered contraband. Respectfully, he remained unable to assist.
- e. 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 rule³ and its refusal an exception⁴. The Supreme Court has illumined⁵ 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.
- f. Upon tentative⁶ assessment of the material⁷ 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 enquiry⁸, 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 exception⁹.
- g. 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 stage¹⁰ 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

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

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

⁵ *Zafar Iqbal vs. Muhammad Anwar & Others* reported as 2009 SCMR 1488.

⁶ *Shahzaman vs. The State* reported as PLD 1994 Supreme Court 65.

⁷ *Asif Ayub vs. The State* reported as 2010 SCMR 1735.

⁸ *Awal Khan & Others vs. The State* reported as 2017 SCMR 538.

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

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

on bail¹¹; 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 applicants are hereby admitted to bail, subject to furnishing solvent surety in the sum of Rs.100,000/- (Rupees One Lac only) each, 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

¹¹ *Subhan Khan vs. The State* reported as 2002 SCMR 1797.