

IN THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Bail Application 116 of 2024

Shehzad

vs.

The State

For the Applicant / Accused : Mr. Nasrullah Korai,
Advocate

For the Prosecution / State : Mr. Naimatullah Soomro
Special Prosecutor Customs

Date of hearing : 24.10.2024

Date of announcement : 24.10.2024

ORDER

Agha Faisal, J. The applicant seeks post-arrest bail, in respect of F.I.R. DEC-3161/2024/DEP/JIAP, registered on 05.09.2024, before P.S. Deputy Collector Customs, JIAP, Karachi, pertaining to offence/s under Section/s 2(s), 15(a), 17 and 139(3) of the Customs Act, 1969, punishable under clause 70(ii)(b) of Section 156 of the Act *ibid*.

2. Learned counsel submits that the earlier pleas for bail by the applicant was rejected by the Court of the Special Judge (Customs, Taxation and Anti-Smuggling-I), Karachi in Case No. 175 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 was that he was smuggling USD 20,000 in cash outside the Pakistan. The FIR states that immediately upon clearance of security at the airport the applicant / accused was apprehended and subjected to search, as a consequence thereof the currency was recovered.
- b. Learned counsel for the applicant pleaded entitlement to the concession of bail on the premise that applicant had every intention of declaring the funds and had not reached the declaration counter when he was apprehended; applicant has been charged under clause 70(ii)(b) which does not carry any

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.

punishment of imprisonment and even if applicant is found culpable it is only a fine that can be imposed.

The Prosecution asserted that the applicant was not eligible for the relief sought as foreign exchange was concealed and that the applicant ought to have been charged under clause 8(c) of Section 156 of Customs Act, 1969.

- c. The narrative contained in the FIR corroborates the applicant's apprehension that he was arrested just post security; there is no reason presently before this court to cast any doubt on the stated intention to declare the funds. The offence charged, clause 70(ii)(b), admittedly does not carry imprisonment and the learned SPP admits that there is no mention of clause 8(c) of Section 156 (1), in the FIR.
- 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 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. Per the Prosecution, no exception is attracted in the present matter.
- e. 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.
- 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 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 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 applicant is hereby admitted to bail, subject to furnishing solvent surety in the sum of Rs.100,000/- (Rupees One

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.

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

Lac 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