

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

Crl. Bail Application No. 2316 of 2024  
Crl. Bail Application No. 1901 of 2024

Applicants : Bakht Munir and Samiullah  
in B.A. No.2316/2024 Sherzad  
through M/s. Musharraf Azhar and  
Muhammad Saleem, advocates

Applicant : Salman Tariq  
in B.A.No.1901/2024 through Shaukat Hayat, advocate

Respondent : The State  
through Mr. Haad A.M. Paggawala,  
Special Prosecutor ANF a/w P.I.  
Muhammad Muzammil

Dates of hearing : 16<sup>th</sup> & 17<sup>th</sup> December, 2024

**ORDER**

**OMAR SIAL, J.**: Acting on spy information, an ANF party led by Inspector Nisar Ahmed inspected five containers at the Karachi port destined for Belgium on 02.05.2024. Approximately 224 kilograms of methamphetamine were recovered, hidden between the panels and doors of two containers. F.I.R. No. 21 of 2024 was registered under sections 6, 9(2), 14, and 15 of the Control of Narcotic Substances Act, 1997. The ANF sleuths discovered that the containers were being exported under **Salman Tariq's** export license. Salman was present at the spot and was arrested.

2. A simplified version of what transpired is as follows. The challan filed by ANF reveals that the containers were loaded in Afghanistan. Abdul Manan Mashwani in Afghanistan contacted **Bakht Munir** in Peshawar, a soapstone trader who also did business in Jalalabad. Mashwani told him he wanted to buy 105 tonnes of soapstone in Jalalabad. A deal was cut, and

Mashwani sent five containers to Bakht Munir's warehouse, where soapstone was loaded onto them. According to the terms settled between the two persons, Bakht Munir was to pay the customs and excise duties levied on the cargo in Jalalabad, which would then be refunded to him.

3. The five trucks laden with containers went through the requisite formalities, were checked at the Torkham border, and were let into Pakistan. Bakht Munir, by the sounds of it, has been carrying out a legitimate business for over a decade. Bakht Munir documented the entire movement of the containers from Afghanistan to the port in Karachi and provided the documents to the ANF. Bakht Munir was arrested in Peshawar and then brought to Karachi.

4. The third applicant in these proceedings is **Samiullah Sherzad**. He was Bakht Munir's old friend. He was arrested because he was with Bakht Munir when the latter was arrested.

5. I have heard the learned counsels for the applicant and the learned Special Prosecutor, ANF. I am constrained to remark that both struggled to explain the movement of the container from Jalalabad to the port in Karachi. Several opportunities and extended time were given to ANF to assist the Court further. However, they did not avail of any opportunity. ANF was queried regarding the export/import process from Afghanistan, the sealing of the container, and the ownership of the containers; however, less than satisfactory replies were given. It was acknowledged that the containers had left Jalalabad, not sealed but with standard padlocks. The rather curious import process in Pakistan requires the containers from Afghanistan to Pakistan to seek clearance at the Torkham border. At this point, it seems that other entities or persons are shown on the documentation as exporters/importers. I have not delved into this deeper as it would tantamount to a deeper analysis of evidence. The basic facts are that the Mashwani purchased soapstone from Bakht Munir in Jalalabad and sent the containers to his warehouse where the soapstone was

loaded; Mashwani asked Bakht Munir that as he was transporting the containers, he should also have them exported to Belgium. For this purpose, Tariq Aziz in Pakistan was engaged as a clearing agent, and for export, the Form E of his son, Salman Aziz, was used.

6. Though one senses a weak investigation in the case, it also seems that the investigation has been hindered due to the cross-border character of the transaction. Records and witnesses have been difficult to procure. Undocumented and unofficial customs and business protocols that prevailed in the handling and movement of the container seem to have also contributed to investigation problems. The question arises: can the exporter be liable for what is hidden in the walls of a container that he did not procure, nor was any contraband found from the goods being exported? The container seems to have gone through check posts, clearing, and customs agencies, before it landed at the Karachi port. The query made by the court regarding who had placed the seals on the originally padlocked containers remained unanswered.

7. As far as Bakht Munir is concerned, the primary question is that of possession. Upon a tentative assessment, it appears that Bakht Munir was not technically in "possession" of the narcotics. The cargo loaded at Jalalabad can be said to be in Bakht Munir's possession but establishing that the containers from which the narcotics were recovered were also in his "possession" is more of a challenge. The Supreme Court in *Muhammad Noor vs. The State* (2010 SCMR 927) observed that "Knowledge is an essential ingredient of the offense as *the word "possess" connotes in the context of section 6 possession with knowledge.*" The containers provided by Mashwani seem to have been opened at the Torkham border. Whether or not the containers were sealed then, who cut the seals, who examined the containers and the cargo, and whether Bakht Munir was in conscious possession are all questions that must be explored at trial. The benefit of the doubt is given to the applicant at this

bail stage, as the evidence collected does not clearly show conscious possession. I have also noted that the investigating officer in the challan that he submitted has admitted that the evidence against the accused is not reliable and convincing and thus did not recommend that they be sent up for trial. ANF is, without doubt, the premium anti-narcotic agency of Pakistan. It is rare for it to acknowledge that evidence is lacking. Weight must be given to the findings of its investigator.

8. The ANF's investigation into Salman Tariq is not up to its expected standard. Apart from using his export form (unfortunately, a common practice), no other evidence was collected against Salman. On the contrary, his father, Tariq Aziz, was said to have been instrumental in carrying out the deal with Mashwani. The mere fact that a large quantity of narcotics was recovered would not be sufficient to abridge the fundamental right of liberty, keeping in view the evidence collected till now. The observations regarding conscious possession above would also apply to his case.

9. The only wrong that Samiullah Sherzad seems to have done is that he is Bakht Munir's friend and was with him when Bakht was arrested. No evidence of his connection otherwise with the entire saga is on record.

10. Given the above, the applicants have made a case for further inquiry. Each is admitted to bail against two sureties of Rs. 2 million each to the satisfaction of the learned trial court. Each applicant will also execute the customary P.R. Bond for the same amount.

JUDGE