

THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Bail Application No. 90 of 2025 Special Criminal Bail Application No. 91 of 2025

- Spl. Cr. Bail 90 of 2025 : Akif Hussain son of Kazim Hussain.
- Spl. Cr. Bail 91 of 2025 : Syed Wajahat Habib son of Syed Ashfaq Hussain Shah.
- For the Applicants : M/s. Muhammad Mustafa Mamdani, Malhar Rathore and Zain A. Jatoi, Advocates [In Both Bail Applications].
- The State : Through Mr. Ashiq Ali Anwar Rana, Advocate along with Rana Shahbaz Khan, Preventive Officer/I.O.
- The Federation : Mr. Muhammad Khalid Javed Raan, Deputy Attorney General for Pakistan.
- Date of hearing : 30-04-2025
- Date of decision : 30-04-2025

*Case No. ASO-138/2025-HQ
u/s: 2(s), 16, 17 178, 187 of the Customs Act, 1969
and 3(I) of the Imports & Exports (Control) Act, 1950,
punishable under clauses (8) & (89) of section 156(1)
r/w section 157(2) of the Customs Act, 1969
P.S: ASO (HQ), NMB Wharf, Karachi*

ORDER

Adnan Iqbal Chaudhry J. - The Applicants seek post-arrest bail in the aforesaid crime after the same has been declined by the Special Judge (Customs, Taxation & Anti-Smuggling-I), Karachi by a common order dated 29.03.2025.

2. Heard learned counsel and perused the record.
3. The Applicants and co-accused persons were booked for the offence of smuggling, defined in section 2(s) of the Customs Act, 1969, and punishable under clauses 8 and 89 of section 156(1) of the Act.
4. The FIR is that on 05.03.2025 a consignment imported from Dubai by M/s. AB Memon & Sons, declared in the G.D. and B/L as

'coolant', cleared through the Customs red channel and left the off-dock terminal of Bay West (Pvt.) Ltd., West Wharf, Karachi [Terminal] over a truck. On a tip-off that the goods were mis-declared, the Anti-Smuggling Organization intercepted the truck and escorted it to the CPF Bond, where an examination revealed that contrary to the G.D. the goods comprised of 4 pallets containing 10,008 assorted mobile phones and 15,000 pieces of e-liquid (for vapes), hence seized. As per the FIR, a preliminary investigation revealed that the G.D. was filed by the Applicants fraudulently using the WeBOC ID of AB Memon & Sons; that when the Applicants were summoned for investigation on 07.03.2025, they confessed to the crime; that the IP address from which the G.D. was uploaded matched the computer recovered from the Applicants' office, hence they were arrested. It is alleged that during interrogation the Applicants disclosed names of employees of the Terminal who helped in "swapping" the coolant with mobile phones and vape liquid. In the interim challan dated 24.03.2025 it is further alleged that a forensic analysis of the cell phone of the Applicant No.1 (Akif Hussain) revealed incriminating text messages.

5. At the outset it is noted that out of the seized goods, vape liquid is not included in SRO No. 566(1)(2005) dated 06.06.2005 issued under section 2(s) of the Customs Act to notify goods that may attract the offence of smuggling. Therefore, it is only the mobile phones that can be alleged to be smuggled.

6. It is acknowledged in the FIR that the consignment was cleared through the 'red channel' *i.e.* after a physical examination by the Customs. Confronted with that fact, learned Special Prosecutor explains that the goods put before the Customs officer for examination were from pallets containing coolant, not from the pallets containing mobile phones and vape liquid. But even assuming that the Customs officer was duped during examination, which seems unlikely, the FIR does not say that the goods seized also included pallets of 'coolant'. The statement then attributed to the Applicants in

the FIR that employees of the Terminal were accomplices in “swapping” the coolant with mobile phones and vape liquid, is even more perplexing. If it was the coolant that was inspected and then swapped, how did the mobile phones and vape liquid arrive at the Terminal ? In other words, the manner in which the goods were smuggled has yet to be explained.

7. Be that as it may, the only evidence against the Applicants thus far is: (a) that the IP address from which the G.D. was uploaded, was traced to a computer at the Applicants’ office; (b) text messages in the cell phone of the Applicant No.1.

Assuming that the G.D. was uploaded by the Applicants, it has yet to be proved that they were the real importers. Payment of duty and taxes on the mis-declared consignment has not been traced to them. Both the FIR and the interim challan are vague as to how the WeBOC ID of AB Memon & Sons came to be with the Applicants. In that regard, the version of the sole proprietor of AB Memon & Sons is not disclosed although the FIR absolves him of the crime.

As regards the text messages relied upon by the prosecution, while those seem to be in respect of a covert act, those were apparently received by the Applicant No.1 from his employee (co-accused Ayaz Mansoori), who forwarded them as messages received from another person. Though it is alleged by the prosecution that such other person was co-accused Amir Ghani, an employee of the Terminal, that as yet to be proved along with the fact that such messages were in respect of the subject consignment.

8. Therefore, the nature of evidence against the Applicants is far from conclusive. A deeper appreciation of such evidence at the stage of bail is neither possible nor desirable. The case requires a further inquiry into the Applicant’s guilt, thus falling within the ambit of sub-section (2) of section 497 Cr.P.C.

9. In view of the foregoing, the Applicants Akif Hussain and Syed Wajahat Habib are granted post-arrest bail in the aforesaid FIR

subject to furnishing solvent surety in the sum of Rs. 1,000,000/- [Rupees One Million only] each alongwith P.R. Bond in like amount to the satisfaction of the trial Court.

Needless to state that the observations herein are tentative, and shall not be construed to prejudice the case of either side at trial.

The office shall place a copy of this order in the other bail application.

JUDGE

Karachi

Dated: 30-04-2025

*PA/SADAM