

THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Bail Appl. No. 176 of 2025

[Muhammad Naveed v. The State]

Applicant : Muhammad Naveed son of
Muhammad Naseem through M/s.
Iftikhar Hussain and Muzzammil
Hussain, Advocates.

Respondent : Nemo.

Date of hearing : 05-08-2025

Date of decision : 05-08-2025

*FIR No. 03/2022
U/s: 2(37), 2(9), 2(14) (a), 3 (1)
(a) & (b), 6(1) 8(2), 7(1), (2)(i) (1i), 8 (1)(a), (ca) &(d),
8A, 21, 22(1), 23(1), 25, 26(1), and 73 of the Sales Tax Act, 1990
punishable under Section 33(3), (5), (8) (11) (13) (16) (18)
punishable under Section 33(3), (5), (8) (11c) 468, 471, 420 PPC
PS: Zone IV, Regional Tax Office-I, KHI*

ORDER

Adnan Iqbal Chaudhry J. - The Applicant seeks post-arrest bail in the aforesaid crime after the same has been declined by the Special Judge (Customs, Taxation & Anti-Smuggling-II), Karachi by order dated 23-06-2025.

2. The Special Prosecutor Customs and the I.O. are called absent. Since this is a date-by-Court and a bail matter, I am not inclined to adjourn the same. Heard learned counsel for the Applicant and perused the record.

3. The Applicant is registered for sales tax as sole-proprietor of M/s. Durrani Impex. Aforesaid FIR was lodged against him on 31-05-2022 for the offence of tax fraud, as defined in section 2(37) of the Sales Tax Act, 1990 [the Act]. It was alleged that the Applicant made inadmissible input tax adjustments of Rs. 287.92 million in sales tax returns based on fake/flying invoices during tax period November 2020 to October 2021. On the same facts, the Assistant

Commissioner-IR passed an assessment order dated 31.03.2023 against the Applicant under the erstwhile section 11(2) of the Act and determined the tax payable as Rs. 540,124/. After paying such tax, the Applicant made an application to the Special Judge for acquittal in the criminal case under section 265-K Cr.P.C. Meanwhile, the Applicant's tax profile was transferred from the RTO to the MTO where the Commissioner-IR exercised *suo moto* powers under section 45A(4) of the Act, set-aside the assessment order dated 31.03.2023, and ordered proceedings afresh against the Applicant under section 11E of the Act. Thereupon, the Deputy Commissioner-IR passed a fresh assessment order dated 14-11-2024 and determined the tax payable by the Applicant as Rs. 317,800,545/-. In view of such assessment order, the Special Judge did not confirm the interim pre-arrest bail earlier granted to the Applicant and he was arrested on 20-05-2025.

4. Apparently, bail was denied to the Applicant by the Special Judge in view of the assessment order dated 14.11.2024 passed against him by the Deputy Commissioner-IR under section 11E of the Act to hold that he committed tax fraud from October 2020 to October 2021. Therefore, admittedly, the Applicant's criminal liability is being premised on his tax liability determined by the department of Inland Revenue. Learned counsel for the Applicant submits that his appeal against the assessment order is pending before the Appellate Tribunal Inland Revenue. In such circumstances, where the Applicant's liability in the criminal case is premised entirely on an order determining civil liability which is under challenge in a statutory appeal yet to be decided, the criminal case against the Applicant becomes a case of further inquiry into his guilt and falls within the ambit of sub-section (2) of section 497 Cr.P.C.

5. At the time the alleged offence of tax fraud was committed, the maximum imprisonment provided for it under clauses 11 and 13 of section 33 of the Act was 5 years. Thus, the case also does not fall within the prohibitory clause of section 497 Cr.P.C.

6. Custody of the Applicant is no longer required for investigation. Bulk of the evidence is documentary, system-based and in the control of Inland Revenue and therefore unlikely to be tampered by the Applicant if set free.

7. In view of the foregoing, the Applicant Muhammad Naveed son of Muhammad Naseem is 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] 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.

JUDGE

Karachi
Dated: 05-08-2025
*SADAM**