

Form No:HCJD/C-121

ORDER SHEET

IN THE LAHORE HIGH COURT

BAHAWALPUR BENCH, BAHAWALPUR

JUDICIAL DEPARTMENT

Crl. Misc. No.2325-B/2024

Sikandar Hayat. **Versus** **The State, etc.**

S.No. of order/ proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties or counsel, where necessary
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26.07.2024.

Mr. Muhammad Naveed Farhan, Advocate for petitioner.
Ch. Muhammad Jameel, Assistant Attorney General.
Mr. Muhammad Tariq Mehmood, Advocate for respondent/FBR.
Mr. Arshad Ali, Deputy Commissioner, IRO/RTO, Bahawalpur.
Mr. Muhammad Altaf, IRO Unit-3, Bahawalpur.

Petitioner seeks pre-arrest bail in case FIR No.IR-Unit-03/BWP/2023-24/01 dated 12.02.2024, alleging violations of sections 2(9), 2(14)(a), 2(33A), 2(37), 3,6,7,8,(1)(a), 8(1)(ca), 8(1)(caa), 8(1)(d), 8A, 22, 23, 25, 26, 34(1)(c), 37A, 37B and 73 of the Sales Tax Act, 1990, punishable u/s 33(3), (5) (8) (11c) (13 (16) & (18) of the Sales Tax Act 1990, read with relevant provisions of CRPC and PPC 468 & 420, *ibid*, at Tax House, Zone-I, Bahawalpur, Regional tax Officer, Bahawalpur.

2. Learned Special Judge (Customs, Taxation & Anti-Smuggling), Lahore had denied pre-arrest bail to the petitioner vide order dated 27.05.2024.

Basis Facts

3. Perusal of the contents of FIR depicts that petitioner, proprietor of M/s Hayat Trading Company, a proprietorship concern registered with the Sales Tax department, is accused of tax fraud, stated to be involved in and responsible for issuance of sale-cum-purchase invoices without actually effecting taxable supplies involving goods [in the context of Sales Tax Act 1990 bills issued and exchanged *inter alia* for carrying ghost transactions are classified as flying/fake invoices] and engaged in crediting / adjustment of inadmissible input tax. Evidently, adjudicatory process was carried out in terms of section 11 of the Act 1990 and financial loss occasioned to the exchequer was provisionally determined at Rs.255.000 Million approx. It is alleged that petitioner benefited from tax fraud and is instrumental in extending benefits to so-called suppliers – who adjustment jacked-up input tax amounts due to issuance of flying/fake invoices.

Submissions

4. Learned counsel for petitioner, at the outset, submits that offences alleged against the petitioner do not fall within the prohibitory clause in terms of sub-section (1) of section 497 Cr.P.C 1898. Submits that as per allegations flying / fake invoices were issued, which can be recovered

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from bearer / holders of alleged invoices, which comprises of documentary evidence, and no question of any recovery from the person of the petitioner arises. Adds that petitioner had joined investigations and submitted statement and had already provided all available / known information to the Investigating Officer. Submits that Muhammad Sibtain Abbas was real culprit and executor of all underlying transactions, who misused petitioner's details and password, and petitioner was neither involved nor had any clue of the transactions. Submits that details of bank accounts provided depicts that petitioner was not the recipient of alleged embezzled amount. Submits that FIR No.5/2023 has been registered against Muhammad Sibtain Abbas and another FIR No.02/2023 was also registered involving Muhammad Sibtain Abbas, hence, further inquiry into guilt alleged is required to plausibly connect the petitioner with commission of offences. Learned counsel cites cases reported as Kashif Anwar and others vs. The State (2022 YLR Note 14), Muhammad Akram Yousaf vs. The State (2022 YLR Note 12), Fawad Ali vs. The State and others (2016 P.Cr.L.J. 1282) and Muhammad Nadeem Siddiqui vs. The State through Director-General Intelligence and Investigation-FBR, Regional office, Lahore (2008 YLR 2666).

5. Conversely, case of the department advocated by their legal counsel is that petitioner is registered, who presented monthly statements / returns and information so

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far gathered clearly established guilt of the petitioner, who is found involved in issuance of flying / fake invoices and adjusting of inadmissible tax. Adds that no deeper appreciation of allegations, at pre-arrest stage is warranted but for the present purposes it is enough that factum of ownership of business was admitted, but to avoid repercussions for the wrongdoing responsibility was shifted to Muhammad Sibtain Abbas, which lame excuse does not entitle petitioner to grant of pre-arrest bail.

Tentative assessment of the material / evidence, so far gathered, is as follows.

6. Precise allegations, attributed in the FIR, are that petitioner is guilty of tax fraud, who was allegedly held liable for issuing flying/fake invoices, without underlying sale/supply transactions, which acts of commission and omission by the accused person had been the cause and effect of huge financial benefits bagged by co-beneficiaries through unwarranted adjustment of otherwise inadmissible tax. Adjudicatory process, envisaged under section 11 of the Sales Tax Act 1990, for the determination of quantum of loss occasioned was carried out and consequently Sales tax Order in Original No.01/2023-24 dated 22.12.2023 was passed – petitioner alleged that order is further assailed. Documents showing registration and periodical submission

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of Sales Tax Returns produced for inspection of the court. Returns depict details of Sales Tax credits and Sales Tax debits – which contained entries showing gross value, taxable value and quantum of sales tax – adjustments claimed in the context of interplay of input and output tax(es). Tax Fraud is defined in section 2(37) of the Sales Tax Act 1990, which *inter alia* categorized instances of falsifying or causing falsification of the invoices as constituent of tax fraud. In the wake of tangible evidence available, mere plea of shifting the entire responsibility / obligation, in law otherwise cast upon the petitioner, being a registered person, does not absolve petitioner nor entitle him to the grant of extra-ordinary relief – simply the involvement Muhammad Sibtain Abbas in other FIR's does not *per se* substantiates innocence of the petitioner. Section 2(37) of the Sales Tax Act 1990 places burden of proof on the petitioner – that entries in the sales tax return(s) are lawful and outcome of lawfully conducted transactions. I refrain from commenting qua context of allegations or the effect of other criminal cases, which discussion may be prejudicial, at this stage. Submission that documentary evidence required is available and arrest of the petitioner is unnecessary is misconceived. Plea of the department is substantiated that custody of the

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petitioner is essential to recover / gather further details / evidence – be it the computers / cellphones, data thereof and communication, electronically or otherwise [fundamental constituents of white-collar financial crime].

Charges against petitioner manifest abuse of value-added tax regime, where benefits are claimed / adjusted through inadmissible input tax, without carrying underlying supplies. Plea that embezzled amounts are not reflected in the statement of accounts is too simplistic an excuse, without appreciating that allegations were that flying / fake invoices were issued to jack-up ghost claims of input tax figures and facilitating bagging of inadmissible tax. Evidence available, so far gathered, is sufficient and reasonable to connect the petitioner with the offences same is charged with, which brings the case within the exception(s) to rebut the plea that punishments prescribed do not fall within the prohibitory category of offences.

No plausible reasons are available to taint intended arrest with *mala fide* nor any ulterior motives, on the part of department, are conspicuously identifiable. Conversely, grant of pre-arrest bail suggests strong possibility of tampering with the evidence, and prejudicing / frustrating investigation. Elements of apparent harm / loss of liberty stand outweighed in the context of available incriminating

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evidence, reasonably establishing involvement. Petitioner is not entitled to grant of extraordinary relief. Judgments referred are distinguishable on facts and extend no support.

7. In view of afore-stated, request for grant of pre-arrest bail is declined. Petition is dismissed and Ad-interim pre-arrest bail granted to the petitioner is hereby recalled.

**(Asim Hafeez)
Judge**

Imtiaz Nasir

APPROVED FOR REPORTING

JUDGE.