

**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**(JUDICIAL DEPARTMENT)**

**Crl. Misc. No. 951-B/2020**

Muhammad Nasir  
*Versus*  
The State

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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10.09.2020.	Mr. Yasir Sultan Yousafzai, Advocate for petitioner. Mr. Muhammad Amin Feroz Khan, Advocate for Customs with Babar Hussain, Inspector/ Investigation Officer, Customs.
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The petitioner (Muhammad Nasir son of Bilal Khan) seeks bail after arrest in the case F.I.R No.37 dated 24.08.2020, under Sections 2 (S), 156 (I) (8)(B), 157 and 178 of Customs Act, 1969, registered with Police Station I&P MCC, Islamabad.

2. Precisely, prosecution case is that on 24.08.2020, Mr. Jaleel Khan- Collector Customs received information through reliable sources that via Flight No.F2-8258, a huge amount of foreign currency is being smuggled. On receiving such information, in the supervision of Mr. Saariq Malik Mehmood, Assistant Collector, a team was constituted and deputed for search of luggage of passengers of the flight. In the meanwhile, a passenger namely Muhammad Nasir S/o Bilal Khan having Pakistani passport No.DD9823243 and CNIC No.14301-9426724-1 entered in the Customs Hall having a blue color Adidas bag and on the research of his bag, 10,000/- Qatari Rial, 53065 UAE Dirham were found concealed in a wireless Speaker Audionic inside the bag. In this regard, said accused disclosed that the said wireless speaker was given to him by one Syed Jamal which was to be handed over to his cousin namely Asad Iqbal at Dubai. The said accused failed

to produce any proof for taking foreign currency out of Pakistan hence, the above-said F.I.R.

3. The petitioner moved bail application before the learned Special Court Customs, Taxation & Anti-Smuggling, Rawalpindi/ I.C.T which was dismissed vide order dated 27.08.2020, hence, the instant petition.

4. Learned counsel for the petitioner contended that the petitioner has not committed any offence but has falsely been involved in the instant case; that the customs authority have involved the petitioner just to show their fake efficiency to their high-ups; that there is no direct or indirect evidence against the petitioner, he is behind the bars since his arrest; that the investigation has been completed and he is no more required for further investigation; that it is a case of further probe into the guilt of the petitioner. Lastly, prayed for grant of bail.

5. Conversely, learned counsel for the Customs vehemently opposed the arguments advanced by the learned counsel for petitioner contending that the petitioner is nominated in the F.I.R; that the petitioner has been caught red handed with foreign currency and prayed that he is not entitled for the grant of post arrest bail.

6. Arguments heard, record perused.

7. Tentative assessment of the record shows that allegedly 10,000/- Qatari Rial, 53065 UAE Dirham were recovered from the possession of the petitioner at Islamabad Airport, which was concealed in a Wireless Speaker. Record further reveals that travelling ticket as well as Boarding Card of the petitioner has not been taken into possession by Duty Officer of the Customs Authority. Therefore, it is yet to be established, as to whether, the petitioner infact intended to smuggle out of Pakistan the above said concealed foreign currency, which was allegedly

recovered from the petitioner, particularly keeping in view the plea of the petitioner that he had no knowledge about the said currency hidden in the speaker which makes the case of petitioner one of further inquiry in terms of Section 497 (2) Cr.P.C. Moreover, the punishment provided for the alleged offence, as amended by the Finance Act, 2020, is upto three years, which does not fall within the four corners of prohibitory clause. Challan has already been submitted before the learned trial Court. Guilt or otherwise of the petitioner is yet to be determined by the learned trial Court after recording evidence. The petitioner is behind the bar since his arrest. His continuous custody would not likely to serve any beneficial purpose at this stage. In the judgment reported as "Mirza Farhan Ahmed Versus The State" (2009 SCMR 304), the Hon'ble Supreme Court of Pakistan has held as under:-

*"Since it has not been controverted by the learned Deputy Prosecutor-General, Punjab, that the petitioner is not a previous convict, he is ill and his custody is no more required for the purpose of investigation and though the offence punishable under section 156(1)(8) carries a sentence of 14 years' imprisonment yet, the act of taking out foreign currency out of Pakistan beyond the prescribed limit being not immoral or anti-social in nature rather technical because as per clause (f) of the S.R.O. in question, the Government itself has allowed taking out of Pakistan the amount upto US Dollars 10,000 or equivalent in other currencies, therefore, in our view a case for grant of bail in favour of the petitioner is made out. Accordingly, this petition is converted into appeal and allowed: The appellant shall be released on bail subject to his furnishing surety in the sum of Rs.1,00,000 (one lac), with P.R. bond in the like amount to the satisfaction of the trial Court."*

8. The Hon'ble Supreme court of Pakistan, in case reported as "Manzoor and 4-others Vs. The State" (PLD 1972 Supreme Court 81), observed as follows:-

*"It is important to remember that bail is not to be withheld as a punishment. There is no legal or moral compulsion to keep people in jail merely on the allegation that they have committed offences punishable with death or transportation, unless reasonable grounds appear to exist to disclose their complicity. The ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of interim bail granted to him, but no satisfactory reparation can be offered to an innocent man for his unjustified incarceration at any stage of the case albeit his acquittal in the long run."*

9. In the circumstances mentioned above, this petition is **allowed** and the petitioner is admitted to bail, subject to furnishing bail bonds in the sum of Rs.5,00,000/- (five lac) with two sureties in the like amount to the satisfaction of learned Trial Court.

10. Needless to mention that this is a tentative assessment, which shall not effect the trial of this case in any manner.

**(GHULAM AZAM QAMBRANI)**  
**JUDGE**

*Rana.M. Ift \**