

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

**Case No. Crl.Misc.No.446/B/2015**

**Ejaz Baig**  
**Vs**  
**The State.**

S.No. of order	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
----------------	----------------------------	---

<b>03.</b>	<b>03.08.2015</b>	<b>Sheikh Mohammad Suleman, Advocate for the petitioner.</b> <b>Ch. Abdul Khaliq Thind, State Counsel.</b> <b>Mr. Mohammad Amin Feroz Khan, Advocate with Mohammad Aslam, Inspector Customs.</b>
------------	-------------------	--

The petitioner (**Ijaz Baig S/O Riaz Baig**) seeks post arrest bail in case FIR No.17/2015, dated 20.05.2015, lodged with Police Station I&P MCC, Islamabad under sections 2(s), 156(1)(8) and 157(70) of Customs Act, 1969 (**hereinafter called the Act**) read with section 8 of Foreign Exchange Regulations Act, 1947.

2. The facts contained in the FIR are that on 20.05.2015 the petitioner was arrested from Benazir Bhutto International Airport, Islamabad while attempting to smuggle foreign currency worth US\$

50000, Canadian \$ 1550, Thai Bath 260 and Pakistani currency amounting to Rs.27,000/- through flight No.631 Qatar Airways.

3. The petitioner filed bail after arrest before the learned Special Judge Customs, Rawalpindi/Islamabad on 05.06.2015 which was dismissed on 17.06.2015.

4. The learned counsel for the petitioner, inter alia, submitted that alongwith petitioner his Family Members were also travelling, therefore, foreign currency which the petitioner had was within the prescribed limits; the petitioner was apprehended at the security desk, therefore, he could not have been said to attempting the offence as there were still many stages to cross. It was further submitted that under Protection of Economic Reforms Act, 1992 any person can hold or take away from the country any amount of foreign currency and the referred law prevails over other laws. It was also contended that though the punishment provided for the offence charged is 14 years, however, there is also lesser punishment of fine for it and in such like circumstances it cannot be said that the offence falls within the prohibitory clause. The learned counsel in support of his contentions placed reliance on cases reported as **2006 SCMR 1069**, **2009 SCMR 304**, **1998 P.Cr.LJ 32** and **2014 P.Cr.LJ 1464**. The learned counsel

also placed reliance on an unreported judgement by the Hon'ble Division Bench of Lahore High Court titled "Ms Aayan Ali vs. the State"(Crl. Misc. No.9211-B of 2015).

6. The learned Special Prosecutor Customs as well the State Counsel, inter alia, submitted that the petitioner is nominated in the FIR and has been apprehended red handed, therefore, is not entitled to concession of bail. It was further submitted that he was caught at the last counter of **ASF**, therefore, he has rightly been charged for smuggling local and foreign currency. In this behalf Special Prosecutor also produced in Court the Boarding Pass issued to the petitioner.

7. The case against the petitioner has been lodged under various provisions of the Act, which in essence prohibit taking foreign currency out of Pakistan beyond the prescribed limits i.e. US\$ 10000 without prior permission/ approval of State Bank of Pakistan. The learned counsel for the petitioner has pointed out that alongwith the petitioner five (5) family members were also travelling and in this behalf produced in Court the itinerary information which shows that they were travelling on 20.05.2015 through flight No.631 Qatar Airways from Islamabad to Doha. The learned State Counsel as well as Special Prosecutor though have submitted that there is nothing on record to the effect

but itinerary information produced by the petitioner substantiates his submission and the question whether the family members of the petitioner independently had prescribed foreign currency limit or the petitioner was carrying on their behalf which calls for further probe in the matter making it a case of further inquiry. Moreover it is not clear from FIR that the petitioner had passed the Customs Counter and had crossed the stage of making declaration as provided under section 139 of the Act, which also calls for further inquiry.

8. In case titled "Mirza Farhan Ahmed vs. the State" (2009 SCMR 304) it was held by the Apex Court that though the offence under sections 156(1)(8) of the Act carries a sentence of fourteen (14) years imprisonment but the act of taking foreign currency out of Pakistan beyond the limits was not immoral or anti-social in nature but rather was technical. In "Naseer Ahmed vs. The State" (1998 P.Cr.L.J.32), it was observed that uncertainty of the provision of law applicable to the case of accused had made his case of further inquiry. In case reported as 2014 P.Cr.LJ 1464 the Hon'ble Balochistan High Court held that when two alternate punishments of imprisonment or fine have been provided, in such like cases bail has to be granted to the accused on the principle that when two statutes provide two

punishments then for the purpose of bail lesser one is considered.

9. The challan in the case has been submitted in the Court, therefore, petitioner is no more required for the purpose of investigation; hence his further detention will not serve any lawful purpose.

10. In view of above discussion, instant petition is allowed and the petitioner is admitted to bail subject to furnishing bail bonds in the sum of Rs.5,00,000/- (Rupees five lac only) with two sureties in the like amount to the satisfaction of the learned Trial Court.

11. Before parting with this order, it is, however, clarified that the observations made hereinabove are just tentative in nature and the same are strictly confined to the disposal of the instant bail petition. The learned Trial Court shall proceed with the trial without being prejudiced from any observation.

(AAMER FAROOQ)  
JUDGE

\*Altaf Malik\*

*Approved For Reporting*