

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl.Misc.No.466-B/2019
Abdul Rehman and another
Versus
The State and another

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	23.07.2019	Mr. Aasim Shafi, Advocate for the petitioners Mr. Muhammad Amin Feroz Khan, Advocate with Muhammad Aslam, I.O./Inspector Customs for respondent No.2

Through the instant criminal miscellaneous petition, the petitioners, Abdul Rehman and Adam Khan, seek post-arrest bail in case F.I.R. No.21, dated 08.07.2019, for offences under Sections 2(s), 156(1)(85)(89), 157 and 178 of the Customs Act, 1969, registered at Police Station I&P, MCC, Islamabad.

2. Earlier the petitioners' post-arrest bail petition was dismissed by the learned Judge Special Court (Customs, Taxation & Anti-Smuggling), Rawalpindi/I.C.T., vide order dated 11.07.2019.

3. Learned counsel for the petitioners submitted that the petitioners have been falsely implicated in this case; that that the petitioners were staff/conductors of the bus in question and had no information about the smuggling of the goods; that there is an unexplained delay of one day in lodging the F.I.R., which makes the prosecution's case doubtful; that nothing has been recovered from the petitioners, and recovery, if any, has been planted by the police and the same is violative of mandatory provisions of Section 103 Cr.P.C.; that the offences alleged to have been committed by the petitioners do not fall within the prohibitory clause

of Section 497 Cr.P.C.; that Sections 156(1) (85) and (89) of the Customs Act, 1969 provide alternate punishment; and that it is settled law that lesser punishment should be considered at a bail stage; that the co-accused, Abdul Qadir has already been granted bail by the learned Judge Special Court, vide order dated 11.07.2019; that the role assigned to the petitioners in the F.I.R. is almost similar to that of co-accused who has been granted bail; that the petitioners are also entitled to the concession of bail on the principle of consistency; that the case against the accused/petitioners is one of further inquiry within the meaning of Section 497(2) of the Cr.P.C.; and that the petitioners are behind bars since their arrest and are no more required by the police for further investigation. Learned counsel has prayed for the petition to be allowed and for the petitioners to be released on bail.

4. On the other hand, learned counsel for respondent No.2 opposed the bail petition by stating that petitioners are nominated in the F.I.R. with specific role of smuggling a huge quantity of goods through bus bearing registration No.LES-15-333; that the petitioners were sitting in the said vehicle/bus, which was allegedly used in smuggling the goods; that the petitioners were arrested by the staff of motorway police; that on search of the vehicle/bus, a huge quantity of goods had been recovered which they intended to smuggle to the Punjab from Khyber Pakhtunkhwa; that after the arrest of the petitioners, the motorway police had given the custody of the persons of the petitioners along with smuggled items and the vehicle allegedly used in smuggling the items to the Custom authorities; and that the goods/items

recovered from the bus *prima-facie* connects the petitioners with the commission of alleged crime. Learned counsel prayed for the bail petition to be dismissed.

5. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

6. Brief facts as stated in the F.I.R., are that on 07.07.2019, the complainant (Juanid Khalid, Inspector) got spy information that a huge quantity of items/goods were to be smuggled through a bus to the Punjab from Khyber Pakhtunkhwa. Pursuant to this, a raiding party was constituted under the command of Assistant Collector, which included Matloob Hussain Shah (Superintendent), Junaid Khalid (Inspector) along with other police personnel. As regards the smuggling of the alleged items through the vehicle in question, information was also provided to the motorway police. At about 5:40 p.m. a bus bearing registration No.LES-15-333 came from Rawalpindi side, and the motorway police stopped the same at *Sumbal* Rest Area near *Kalar Kahar* and checked the persons sitting in it. On search of the said vehicle, a huge quantity of goods/items were recovered, which included imported soap, shampoo, spark plug, bicycles, tri-circle locks and tea etc. Furthermore, during the interrogation, the accused persons sitting in the said bus disclosed their names as Adam Khan, Abdul Rehman and Abdul Qadir. When all the accused persons failed to produce documents showing the goods were legally transported, the Custom authorities took all the stock of the goods in their custody and accordingly, the F.I.R. in

question was lodged against above-named accused persons.

7. Perusal of the record reveals that prior to apprehending the accused/petitioners, the Custom authorities as well as the motorway police had got spy information that a huge quantity of items/goods were to be smuggled through a bus to the Punjab from Khyber Pakhtunkhwa, and if raided, they can be apprehended with smuggled goods/items, but despite that no one from the public was associated to witness the recovery proceedings. This very fact makes the case against the petitioners as one of further inquiry. Even otherwise, the contents of the F.I.R. show that all the accused persons (including the accused, Abdul Qadir) who was granted bail by the learned Judge Special Court (Customs, Taxation & Anti-Smuggling) were apprehended by the motorway police while they were sitting in the bus in question which was allegedly used in smuggling the items/goods. The said smuggled items/goods were recovered from the bus and not from the possession of the accused/petitioners. Therefore, role ascribed to the petitioners is almost similar to that of co-accused who has been granted bail. It is settled law that the questions of sharing common intention and vicarious liability in the commission of alleged crime shall be determined by learned Trial Court after recording of evidence.

8. Since the alleged recovery was from the bus and not from the persons of the petitioners, and since the co-accused, Abdul Qadir has been granted bail by the learned Judge Special Court, therefore, the petitioners are also entitled to the discretionary relief of post-arrest bail on account of

having similar role in the commission of alleged crime.

9. There is nothing on the record to suggest that the petitioners are having any past criminal history. They are already behind the bars since 07.07.2019 and investigation is said to have been complete.

10. For what has been discussed above, the instant petition is accepted and the accused/petitioners are admitted to post-arrest bail subject to furnishing of bail bonds in the sum of Rs.2,00,000/- each with one local surety each in the like amount to the satisfaction of the learned Trial Court. The observations made herein above are tentative in nature and shall have no impact on the merits of the case.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan*