

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

**Crl. Misc. No. 974-B/2020**

Awais Farooq

*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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17.09.2020.

Mr. Khurram Masood Kiani, Advocate for petitioner.  
Mr. Muhammad Amin Feroz Khan, Advocate for  
Customs with Shakeel Ahmed, Inspector Customs.

The petitioner (Awais Farooq S/o Muhammad Farooq) seeks bail after arrest in the case F.I.R No.38 dated 01.09.2020, under Sections 2 (S), 156 (1) (8) (b) (iii) (70)/ 157/ 178 /139 of the Customs Act, 1969, registered with Police Station I&P Branch, MCC, Islamabad.

2. Precisely, prosecution case is that on 01.09.2020, a credible information was received that foreign currency would be smuggled. On such information, the petitioner was apprehended and his search lead to recovery of 25,000/- Saudi Rial and 45,000 UAE Dirham. It is further alleged that the petitioner failed to produce any cogent reason for taking foreign currency out of Pakistan, thus has committed the alleged offence.

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 08.09.2020.

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 25,000/- Saudi Rial and 45,000 UAE Dirham were recovered from the possession of the petitioner at Islamabad Airport, which was kept in his purse. 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. 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 of Section 497 Cr.P.C. Petitioner has been sent to judicial lock-up and is no more required by the police for further investigation. 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.3,00,000/- (three lac) with two sureties each and PR of 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\**