

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Muhammad Ali Mazhar
Mr. Justice Irfan Saadat Khan

Criminal Petition No.35-K/2024

Against the judgment dated 14.3.2024 passed by
High Court of Sindh, Karachi in Spl. Cr. Bail Appeal
No.17/2024

Attaullah

...Petitioner(s)

Versus

The State

...Respondent(s)

For the Petitioner: Mr. Nisar Ahmed Bhanbhro, ASC

For the State: Mr. Khaleeqe Ahmed, DAG

Date of Hearing: 04.04.2024

ORDER

Muhammad Ali Mazhar, J.- This criminal petition for leave to appeal is directed against the order dated 14.03.2024 passed by the High Court of Sindh, Karachi, in Special Criminal Bail Application No. 17, 18 & 19 of 2024.

2. According to the First Information Report, Muhammad Azhar Azeem, Intelligence Officer, Directorate General Intelligence and Investigation (Customs), lodged the FIR No.M-4070/DCI/Seiz/2024 under Sections 2(s), 16, 157 (1) and 178 of the Customs Act, 1969 at P.S Directorate General I & I-Customs, Karachi, wherein he reported that the Anti-Smuggling Wing of the Directorate of Intelligence and Investigation-Customs, Karachi, received an information that non-paid Petroleum, Oil and Lubricants (POL) are transported from Karachi to Pak-Arab Refinery Limited (PARCO) through White Oil Pipeline which is being pilfered/stolen by some unscrupulous elements by clamping/welding a concealed pipeline at the warehouse situated at North West, Industrial

Zone, Port Qasim Authority, Karachi, and they are selling the said stolen POL in the open market. After obtaining search warrant, notice was served to the tenant/possession-holder of the warehouse, namely Vijaish Kumar S/O Radha Kirshan, and a search was initiated. During the search, the raiding team discovered of a 174 feet long tunnel that led to "White Oil Pipeline" of PARCO, three vehicles bearing Registration Nos. E-1425 (Container), TKV-528 and TKE-088 (Both Mazda Truck) having concealed tanks loaded with stolen/non-duty paid POL., and a Suzuki Swift Car bearing Registration No. BXJ-330 used as pilot to clear the loaded stolen POL. Apart from the tenant/possession-holder, the other culprits who were available there were Attaullah S/O Allah Diwayo Khushik, Pilot, Amjad Ali S/O Kareem Baksh, Mugshi, Naseebo Khad S/O ATI Hasan, Chokidar, Imran Siddique S/O Abdul Ilal, Pilot, Vijaish Kumar S/O Radha Kirshan, Mohammad Wafa Brohi Sio Fatah Uddin, Chokidar, Mohammad Usman Tanveer S/O Tanveer Shoukat, Driver of Mazda Truck Regtt. No. TKE-088, Irfan S/O Akbar Khan, Cleaner of Mazda Truck Regtt. No. TKV-528, and Aamir S/O Sajid, Labor. Therefore, all the recovered goods and vehicles were taken into custody and the available culprits involved in the illegal activity were arrested along with their personal mobile phones after serving of notice under Section 171 of the Customs Act, 1969 ("Customs Act").

3. The learned counsel for the petitioner argued that there is an inordinate delay of 14 hours in the registration of FIR without any plausible explanation, though it is claimed that the raiding party, after seizure of the recovered articles, promptly rushed to the customs police. The unexplained delay shows that after due deliberation, many persons were unnecessarily involved in the alleged crime. He further argued that there is no evidence of any smuggling against the petitioner. It was also contended that there is no evidence on record to say that the petitioner was a pilot, his role is identical to other co-accused persons whom the High Court has granted bail, and keeping in mind the rule of consistency, the present petitioner is also entitled for the same relief.

4. The learned Deputy Attorney General ("DAG") waived the notice and argued that there is ample evidence available on the record against the petitioner who is involved in the pilferage and stealing of POL with other co-accused, hence his bail application was rightly dismissed by the High Court. He further contended that the High Court granted bail to 4 co-

accused persons but their role was different than the role of the present petitioner.

5. Heard the arguments. To start with, we called upon the learned DAG to highlight the role assigned to the present petitioner in the FIR. He responded that, in fact, the petitioner has been assigned the role of pilot to a vehicle in which the stolen POL was stored for transporting it to some other destination. It is an admitted position that the learned High Court granted bail to four co-accused persons, namely, Naseebo Khan, Muhammad Wafa Brohi, Amjad Ali, and Aamir Ali. The FIR indicates the case of joint recovery of stolen POL from several persons including the petitioner and 4 other persons who have already been extended the benefit of bail by the learned High Court. According to the FIR, all recovered goods were taken into custody and the available culprits involved in the illegal activity were arrested along with their mobile phones after serving notice under Section 171 of the Customs Act. It is not the case of the prosecution at this stage that the petitioner was found stealing or pilfering the POL but he was attributed the role of pilot. Whether he is involved directly or vicariously or with the group of persons with common intention to commit the crime of the alleged smuggling is something that cannot be decided without recording evidence to prove his guilt, and in our considered view, requires further inquiry.

6. The case of further inquiry pre-supposes the tentative assessment which may create doubt with respect to the involvement of the accused in the crime whereas the expression "reasonable grounds" refers to grounds which may be legally tenable, admissible in evidence, and appealing to a reasonable judicial mind as opposed to being whimsical, arbitrary, or presumptuous. The prosecution has to demonstrate that it is in possession of sufficient material/evidence, constituting 'reasonable grounds' that accused had committed an offence falling within the prohibitory limb of Section 497 of the Code of Criminal Procedure, 1898, while for attaining bail, the accused has to show that the evidence/material collected by the prosecution and/or the defence plea taken by him created reasonable doubt/suspicion in the prosecution case and he is entitled to the benefit of bail. For all intents and purposes, the doctrine of 'further inquiry' denotes a notional and exploratory assessment that may create doubt regarding the involvement of the accused in the crime. It is a well-settled exposition of law that the object

of a trial is to make an accused face the trial, and not to punish an under trial prisoner. The basic idea is to enable the accused to answer the criminal prosecution against him, rather than let him rot behind bars. The astuteness and insight that bail is the rule and jail is the exception is overwhelmingly recognized through the repetitive pronouncements of this Court. There is no hard and fast rule or inflexible principle to regulate the exercise of the discretion for grant of bail except that the discretion should be exercised judiciously and there is no inexorable principle in the matter of extending bail but it depends on the facts and circumstances of each case while exercising judicial discretion in granting, refusing, or cancelling the facility of bail, which is neither punitive nor preventative, but is based on an important feature of the criminal justice system that cannot be ignored; that just as liberty is precious for an individual, simultaneously, the interest of the society in maintaining law and order is also dominant. In our view, both are immensely indispensable for the survival and perpetuation of a civilized society.

7. According to the learned counsel for the petitioner, the petitioner was a low paid employee like other four persons who have been granted bail by the High Court. Seemingly, his role does not appear to be different than the role of the other co-accused persons, namely, Naseebo Khan, Muhammad Wafa Brohi, Amjad Ali, and Aamir Ali who were arrested with the petitioner allegedly on the spot where they all were found in commission of the offence, and on arrest, a joint recovery was made, while the petitioner was said to be the pilot, which attribution of role requires evidence. However, at present, his role cannot be found dissimilar to the aforesaid co-accused persons. The rule of consistency, or in other words, the doctrine of parity in criminal cases, including bail matters, encapsulates that where the incriminated and ascribed role to the accused is one and the same as that of the co-accused then the benefit extended to one accused should be extended to the co-accused also on the principle that like cases should be treated alike but after accurate evaluation and assessment of the co-offenders' role in the commission of the alleged offence. While applying the doctrine of parity in bail matters, the Court is obligated to concentrate on the constituents of the role assigned to the accused and then decide whether a case for the grant of bail on the standard of parity or rule of consistency is made out or not.

8. In view of the above, this criminal petition is converted into an appeal and allowed. As a consequence, thereof, the petitioner is granted bail subject to furnishing bail bond in the sum of two hundred thousand rupees with one surety in the like amount to the satisfaction of the trial Court. The petitioner is also directed to regularly appear before the Trial Court, failing which, the prosecution shall be at liberty to move an application for cancellation of bail granted to the petitioner. The observations made above are tentative in nature and shall not prejudice the case of either party before the Trial Court.

Judge

Judge

KARACHI

04.4.2024

Naseer

Approved for reporting