

[Karachi]

Present: **AQEEL AHMED ABBASI, J.**

Muhammad Hanif

Versus

The State

Spl. Criminal Bail Application No. 99 of 2012, decided on 6th August, 2012.

For the Respondent: Ashiq Ali Anwar Rana, Advocate and Dilawar Hussain, Standing Counsel alongwith I.O. Ghulam Younus, Directorate of Intelligence.

Date of hearing: 6th August, 2012.

ORDER

AQEEL AHMED ABBASI, J. --- Being aggrieved and dissatisfied with the order dated 23.06.2012 passed by learned Special Judge (Custom & Taxation) Karachi in Case No. 73 of 2011 emanating from F.I.R No. 678/DCI/STFE/Jinnah Impex/2011 registered under Section 33(3) of Sales Tax Act, 1990 registered by Directorate General of Intelligence and Investigation- FBR, Karachi on 09.05.2011, whereby the bail application of the applicant namely Muhammad Hanif was declined, the applicant has filed instant bail application before this Court seeking his release on bail.

2. Brief facts relevant for the purposes of disposal of instant bail applications and the prosecution story as stated in the F.I.R. is as follows:---

"A credible information was received from a reliable source that M/s M. King International situated at Shop No. M 130 Jillani Centre Kharadar, Karachi having Sales Tax Registration No. 1703280000482 are involved in issuance/receipts of fake invoices and its output is being used for claiming refund or input tax adjustment by other registered persons. In pursuance of Board's approval C.No. 4(4)STM/2005, dated 24th February, 2010, this Regional Office initiated

investigative audit of M/s M. King International (hereinafter referred to as the registered person).”

As per registration record of Sales Tax Department the registered person got the sales tax registration on 17.09.2008 and holds the category of Importer/Exporter/Wholesaler. A notice for production of record under Section 25 of the Sales Tax Act, 1990 *vide* C.No. 481/DCI/8-10/FEST/Inq/G.1/10/1042, dated 12.03.2010 and subsequent reminder were issued to the registered person at registered address through Pakistan State Services Courier which were returned as undelivered with comments “Office not Exists.” Moreover, physical verification of the said premises was also conducted for the purpose of tracing the registered person. The verification team reported that “the said office has been closed for the last three or four years”. Moreover, letter for production of record was also issued as residential address of the owner of the registered person Mushtaq Masih S/o Sardar Masih bearing CNIC No. 38403-7840098-3 at Gali No. 02 Noori Gate Basti Mohalla Christian Colony, Sargodha *vide* C.No. 481/DCI/8-10/FEST/Inq/G.1/10/1042, dated 13.5.2010 through Pakistan State Service Courier which was received back as undelivered with comments “Incomplete address”, which proves that the registered person got registration on fake documents and was only engaged in the business of issuance/receipts of fake invoices and causing huge loss to national exchequer.

In order to ascertain the factual position, letters to all the suppliers (08) of the registered person were sent for verification of the taxable purchases and input tax involved therein. Out of the 08 suppliers, 04 suppliers replied that they have never supplied any goods to M/s. M. King International. Whereas 02 letters were received back as undelivered with the

comments of the courier "No such consignee exists at given address or consignee office shifted" and reply in respect of the remaining 02 letters is still waited. Thus, it is clear that the registered person has claimed/adjusted inadmissible input tax amounting to Rs. 33.435 Million by declaring fake purchases of goods/raw materials/services amounting to Rs. 195.442 Million (Approx) from different suppliers during Oct 2008 to June-2009.

Furthermore, a letter to the registered person's declared bank *i.e.* Askari Bank, I.I. Chundrigar Road, Karachi was issued to seek information regarding Account No. 227905135. In response M/s. Askari Bank informed that the required bank account is incorrect which shows that the registered person had declared fake bank account. A contravention report covering tax period August 2008 to June 2009 has already been submitted in the office of the Chief Commissioner, Inland Revenue, R.T.O, Karachi for adjudication purpose. Permission to initiate criminal proceedings in this case has already been granted by the FBR, Islamabad *vide* letter C.No. 4(4)STM/2005/162997-R, dated 22.12.2010.

It is pertinent to mention here that during the course of investigation an Internet Café was traced from where monthly Sales Tax Returns of the registered person were uploaded on the website of the FBR. On inquiry from owner of the Internet Café Mr. Muhammad Shoaib S/o Ashraf, it revealed that Anees Elahi, his son Faisal Elahi and their relatives Sheikh Zahid Iqbal Sehgal *Alias* Biloo used to come in his café for filing the monthly Sales Tax Returns of M/s. M. King International. He further disclosed in his statement that these persons also filed the monthly Sales Tax Returns in respect of the under mentioned units:---

- (i) M/s. J.A. International.
- (ii) M/s. Amjad Traders
- (iii) M/s. R.O.F. Packages
- (iv) M/s. Royal Enterprises v. M/s. Shahid Impex
- (vi) M/s. Umer Traders
- (vii) M/s. Wali Enterprises
- (viii) M/s. Buyers & Amp. Buyers
- (ix) M/s. Zaib Brothers
- (x) M/s. Nadeem Impex
- (xi) M/s. Abassi Enterprises
- (xii) M/s. NY Importer & Exporter
- (xiii) M/s. Nine Star International
- (xiv) M/s. S.B. Enterprises
- (xv) M/s. Actuate Corporation
- (xvi) M/s. A.A. Enterprises
- (xvii) M/s. ACME International
- (xviii) M/s. S.K. Enterprises.

In view of the above narrated facts, it is established that the registered person has claimed/adjusted inadmissible input tax as the suppliers from whom purchases have been shown, have never supplied the goods to M/s. M. King International. Thus by claiming/adjusting inadmissible input tax through submitting fake and fraudulent Sales Tax Returns, declaring fake bank account and issuing fake Sales Tax invoices valuing Rs. 195336,984, involving Sales Tax of Rs. 33,418,218, the registered person has deprived the national exchequer to the tune of Rs. 33,418,218 and the accused persons namely Mushtaq Masih, Anees Elahi, Faisal Elahi and

Sheikh Zahid Iqbal Sehgal *Alias* Biloo have violated the provisions of the Sales Tax Act, 1990 as enumerated in column No. 08 of this report.

Accused persons namely Faisal Elahi and Sheikh Zahid Iqbal Sehgal *Alias* Biloo were called at the office of the Directorate General of Intelligence & Investigation-FBR, Regional Office, Karachi on 19.1.2011 and they have been arrested after necessary confrontations and completion of legal formalities.

FIR is lodged accordingly. Further investigations are in progress and efforts are underway to arrest the owner of M/s M. King International, namely, Mushtaq Masih, Anees Elahi and other culprits involved in this case."

3. It is *inter-alia* contended by the learned counsel for the applicant that the applicant is innocent and has been falsely implicated in the instant crime at the instance of prosecution on the basis of alleged data recovered from his computers. Per learned counsel, neither the applicant was nominated in the F.I.R. nor any role has been assigned to the applicant in the alleged crime. It has been further stated that various interim challans are being submitted before the learned Trial Court by the prosecution, whereas, no final challan so far has been submitted inspite of considerable lapse of time. Per learned counsel, the entire act of the respondents, including arrest the of present applicant and his false involvement in the instant crime is based on *mala fides* which is evident from the record and proceedings. Per learned counsel, neither any incriminating material has been recovered by the prosecution nor any amount which alleged to have been wrongly claimed as input adjustment has been mentioned in the challan. Learned counsel further submitted that even no alleged fake invoices have been recovered from the applicant by the prosecution, whereas the entire case is based on a concocted story. Per learned counsel,

there has been violation of Section 103, Cr.P.C. whereas, the applicant being importer has already paid all duty and taxes in respect of exports made during the relevant period. Learned counsel further stated that there is no tax liability whatsoever outstanding against the applicant nor any Show-Cause notice has ever been issued to the applicant, who has been now implicated in the instant crime by the prosecution without even following the legal procedure. Per learned counsel, in the garb of instant F.I.R. a large number of registered persons are being implicated by the prosecution just to cause harassment and extract money.

4. Learned counsel for the applicant has argued that other co-accused persons nominated in the F.I.R. or through interim challans in the similar crime have been granted bail by this Court or the Trial Court, whereas the present applicant is behind the bar since his arrest. Per learned counsel, the prosecution obtained remand of the applicant two times, however, nothing incriminating could be recovered from his possession. It is further contended that the applicant is a man of infirm health, who is facing hardship whereas his health is deteriorating day by day. Per learned counsel, the alleged recovery of CPU and laptop prints is also bogus and has been made in violation of legal procedure, whereas, neither the applicant nor any private witnesses were associated with such recovery, whereas, no fake invoices on the basis of which the applicant has allegedly claimed false input adjustment have been recovered/produced by the prosecution, hence entire case against the applicant on the face of it is groundless. Per learned counsel, the offence otherwise does not fall within the prohibitory clause and relates to documentary evidence and unless any incriminatory material is produced, which may connect the applicant/accused in the instant crime. No useful purpose will be served by keeping the applicant behind the bar. In support of his contention, learned counsel has placed reliance on the following reported judgment and

the orders passed in other bail applications in respect of other co-accused persons.

- (1) *Imtiaz Ahmed and another v. The State* (PLD 1997 SC 545)
- (2) *Zaheer Hussain v. The State* (PLD 2006 Karachi 397)
- (3) *M/s. Telecard Limited, Karachi v. The Collector of Sales Tax & Central Excise (Enforcement), Large Taxpayers Units, Karachi and another* (2010 P.C.T.L.R. 1071)
- (4) *Fazal Mahmood v. The State* (SBLR 2005 Sindh 41)
- (5) *Faisal Ellahi and others v. The State* (Spl. Cr. Bail App. No. 05/2011 before the Hon'ble Sindh High Court).
- (5) *Manzoor Mughal and others v. The State* (Case No. 73 of 2011 before Special Judge (Customs & Taxation), Karachi)

5. Conversely, Mr. Ashiq Ali Anwar Rana, learned counsel for the department has opposed the grant of bail to the applicant, however, submitted that the bail may be granted to the applicant subject to deposit of the disputed amount of sales tax evaded by the applicant. It has been further contended that though the offence does not fall within the prohibitory clause, however, the matter pertains to evasion of tax, which has caused loss of revenue to the exchequer, hence the applicant may not be admitted to bail. It has been contended that some of other co-accused persons, who were nominated in the F.I.R. have deposited the disputed amount whereafter they were released on bail. In support of his contention, learned counsel has placed reliance in the following unreported cases:---

- (1) *Tahir Kraimi v. The State* (Spl. Cr. Bail Application No. 32/2012)

- (2) *Syed Hamid Ali v. The State* (Spl. CrI. Bail Application No. 39/2012)
- (3) *Muhammad Arshad v. The State* (Spl. CrI. Bail Application No. 92/2012)

6. I.O. of the case, who was present in Court alongwith his counsel, when confronted as to why the final challan has not yet been submitted in Court inspite of lapse of considerable time of about one and half year and when the investigation is almost complete and all recoveries have been effected from the accused persons, he could not satisfactorily respond to such query. He further admitted that neither the present applicant is nominated in the F.I.R. nor was implicated during pendency of the proceedings for more than about one and half year, however, submitted that on further inquiry the name of the present applicant has been included in the interim challan. When confronted as to what incriminating material including alleged fake invoices on the basis of which the present applicant has allegedly claimed false input adjustment of sales tax has been recovered from the present applicant, the I.O. has frankly stated that no fake invoices, copy of sales tax return or other incriminating material, except computer, has been recovered from the possession of the applicant. He has further stated that no adjudication proceedings have been initiated so far against the applicant for proper assessment and for the recovery of the amount of tax which has allegedly been evaded by the present applicant.

7. I have heard all the learned counsel for the parties, the I.O. of the case, perused the record and examined the case-laws relied upon by both the parties. From perusal of the FIR, interim challans submitted in Court and in view of the statement of the I.O. of the case, it appears that no action has been taken by the prosecution against the registered persons *i.e.* the end user who has allegedly claimed input tax adjustment based on fake invoices. There is no mention in the F.I.R. or interim challan

about the direct role of the applicant in the alleged crime, whereas there is no explanation for violating the provisions of Section 103, Cr.P.C. at the time of confiscation of the computer. The alleged offence does not fall within the prohibitory clause of Section 497, Cr.P.C., whereas punishment under Section 33 of the Sales Tax Act, 1990 is five years or fine or both, which offence may be determined after recording of evidence and on conclusion of the trial. The prosecution case is based on the documentary evidence which has allegedly been recovered from the possession of the present applicant/accused whereas investigation has been completed and the applicant/accused is no more required for further investigation. The applicant is behind the bar since his arrest, whereas trial has not yet commenced even after a lapse of considerable time of about one and half year. It appears that the prosecution could not so far fix criminal liability of alleged tax fraud upon the present applicant. No action whatsoever has so far been admittedly taken against the main accused persons nor the proper adjudication proceedings, as stated by I.O., have yet been initiated to find out the extent of the tax evasion involved in the instant case, as well as the extent of criminal liability of the accused persons nominated in this case.

8. In view of hereinabove facts and circumstances of the case, I am of the view that the prosecution story cannot be treated as free from doubt and the matter requires further inquiry, whereas the offence does not fall within the prohibitory clause of Section 497, Cr.P.C. The case-law relied upon by the learned counsel for the applicant appears to be relevant which is attracted on the facts and circumstances of this case, whereas the unreported cases relied upon by the learned counsel for the department is based on distinguishable facts hence not attracted in the instant case. The applicant has no previous criminal history, whereas the alleged confessional statement before the police in the absence of any other connecting material, cannot be given due weight at this stage. In the

case of *Akhtar Zaman Khan v. The State* (2009 P.Cr.R. 1482), a Division Bench of Lahore High Court, under somewhat similar circumstances in a case of sales tax evasion, while granting bail to the applicant/accused has held that the accused cannot be denied bail only on the ground that he has caused huge loss to public exchequer. Reliance in this regard was placed on the judgment of the Hon'ble Supreme Court reported as *Tariq Bashir and 5 others v. The State* (PLD 1995 SC 34).

9. In the case of *Zafar Iqbal v. Muhammad Anwar and others* reported as 2009 SCMR 1488, Full Bench of the Hon'ble Supreme Court, headed by the Hon'ble Chief Justice, while placing reliance in the cases of *Tariq Bashir and 5 others v. The State* PLD 1995 SC 34 and *Subhan Khan v. The State* 2002 SCMR 1797 has held that "Courts, in cases where offence falls within the non-prohibitory clause of Section 497, Cr.P.C., consider favourably by granting bail as a rule but decline to do so in the exceptional cases. As far as exceptional circumstances are concerned those are to be taken into consideration depending upon each case."

10. Similarly, in the case of *Saeed Ahmed v. The State* 1996 SCMR 1132, the Hon'ble Supreme Court has held that "case against accused entirely depended upon documentary evidence which was in possession of the prosecution and there is no possibility of tampering with the evidence, petitioner and the accused was admitted on bail."

11. In view of hereinabove facts and the case-law referred to hereinabove, I am of the opinion that the applicant has made out a case of further inquiry, whereas keeping him behind the bar at this stage will amount to pre-trial punishment on the charges which do not fall within prohibitory clause of Section 497(1), Cr.P.C. Moreover, almost all the accused persons, who were nominated in the F.I.R. have been admitted to bail. Accordingly, *vide* short dated 06.08.2012 the applicant was admitted on bail subject to furnishing solvent surety in the sum of Rs. 2.5 million with

P.R. Bond in the like amount to the satisfaction of the learned Trial Court, and these are the reasons for such order.

12. Needless to observe that the observations made herein are tentative in nature and shall not prejudice the merits of the case which may be examined strictly in accordance with law and on the basis of evidence on record. Applicant will continue to be associated with investigation and shall attend the Court proceedings without fail.

13. However, it is clarified that if, the applicant misuses the concession of bail in any manner, the learned Trial Court shall be at liberty to proceed against the applicant as per law.
