ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Misc. No. 300-B/2025

Mst. Nighat Manzoor

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.
	19.02.2025	Mr. Tauqeer Akram and Mr. Qaiser Satti, Advocates for the petitioner. Mr. M. Amin Feroz Khan, Special Prosecutor Customs. Sehrish Nazire, Inspector/I.O.

Through this bail application, the applicant has prayed for her post-arrest bail application in case FIR No. 03, dated 03.02.2025, U/S 3(1) of Import & Export Control, read with Section 2(s), 16, 156(1)(8)(70)(i)(e) of the Customs Act, 1969 as well as Section 139, SRO 499(1)/2009, PS I&P Branch, MCC, Preventive, Islamabad.

2. Concisely the facts referred in the instant FIR lodged on the complaint of Komal Saleem, Inspector Customs, Islamabad are that on 03.02.2015 a lady passenger namely Nighat Manzoor entered into international departure hall and not submitted any declaration at the initial custom declaration counter. However, during search of petitioner, raw gold weighing 934 grams and jewelry weighing 1214 gram were recovered from her purse and failed to produce any valid document for transporting the same. Hence, this FIR.

3. Learned counsel for the petitioner submits that petitioner is innocent and has falsely been implicated in this case; that recovered gold is legitimate being the same is declared in income tax returns and purchasing invoice is also available; that petitioner was searched by the Customs officials in violation of Section 159 of the Customs Act, 1969; that no opportunity was given to the petitioner to produce the valid documents regarding carrying such gold and jewelry; that petitioner is neither smuggler nor had been involved in any criminal activities; that instant FIR has been lodged with unexplained delay of approximately 12 hours; that case of petitioner is one of further inquiry in terms of Section 497 (2) Cr.PC., therefore, she is entitled for concession of post-arrest bail.

4. Conversely, learned Special Prosecutor Customs has opposed the instant bail application on the ground that petitioner is directly nominated in the FIR as accused with specific role of transporting gold and foreign currency; that petitioner has failed to produce any valid documents for carrying such a huge quantity of gold, bullion, etc. to take abroad. Hence, instant petition is liable to be dismissed.

5. The accused was arrested at the airport by the customs authorities. The petitioner, being a passenger, was not yet issued any boarding card, nor did she reach the international departure lounge. To confirm whether the customs authorities can apply the minimum requirement of smuggling in terms of section 2 of the

Customs Act, 1969 upon the petitioner for possessing gold ornaments. No bag tag or information about the subject bag booking in the name of the accused person was available on the record. Simply having gold ornaments over the allowed limit, which were found during a passenger's scan at the ASF scanner near the departure lounge entrance, does not automatically prove guilty intent or amount to an attempt to commit an offence. At this point, the passenger had not gone through immigration or gotten the required stamp on their passport. Even if I assumes there was an initial plan to smuggle the gold, the passenger still had the chance to change their mind and give the extra gold to someone outside the departure area, as often happens in cases of excess baggage. Therefore, even if intent is assumed, the actions would not go beyond just preparing and would not be considered an actual attempt.

6. In Pakistan, the Federal Board of Revenue (FBR), Customs Authorities, and approved jewelers/ valuators are authorized to determine the value of gold for investigative purposes. The valuation is based on the weight, purity, and prevailing market price of gold. Proper methods, such as XRF analysis (X-ray Fluorescence Analysis) and hallmarking, are used to ensure accuracy. Compliance with legal frameworks, such as the Income Tax Ordinance of 2001 and the Customs Act of 1969, is essential for fair and transparent valuation. The value of the recovered gold ornaments was estimated to be

approximately 48,119,487; however, the Investigation Officer failed to provide any substantiation, reference, or documentation regarding the methodology, formula, or standard employed to ascertain the said value prior to the registration of the case. The investigation record is conspicuously silent on whether the aforementioned valuation standard was adhered to in determining the value of the gold. This aspect of the case is of significant relevance, particularly in relation to the quantum of sentence prescribed under the provisions of the Customs Act of 1969.

7. There is nothing available on the record to show that the applicant is a repeat offender with positive evidence, which may prove that she had intentionally concealed the Gold ornaments. On the contrary, the applicant accused submitted her FBR Returns under section 114 (1) of her husband's Income Tax Ordinance, 2001, which prima facie shows the entry of the gold ornaments. These factors possession of excess gold ornaments *prima-facie* lack of conclusive guilt, the passenger not yet clearing immigration, and the possibility of abandoning the act makes the prosecution's case one of further inquiry.

8. The first Proviso of section 497 subclass 1 of the Code of Criminal Procedure (CRPC) stipulates that the court may order the release on bail to any person under the age of 16 years, any woman, any person who is sick or infirm who is an accused of an offence. The Term such an offence in Proviso refers to offences listed under the second part

of the prohibitory class of section 497 (1) (CRPC), as for all other non-bailable offences, the court is already empowered to grant bail under the first part of 497 (1); therefore, the first proviso grants the court same discretion to grant bail in respect of offences covered by the prohibitory clause against the accused persons who are underage of 16, women and those who are sick or infirm as it does under the first provision of 497 (1). This means that for the persons mentioned in the first provision to section 497, one bail should generally be granted and refusal only in exceptional circumstances; no exceptional circumstances exist in the present case meriting dismissal of the instant bail application irrespective of the above the reliance can be placed in the case of Tahira Batul versus the state PLD 2022 764 Asiya vs state 2023 SCMR 383, Ghazala vs the state 2023 SCMR 887 and Munawar Bibi vs the state 2023 SCMR 1729.

9. In view of the above circumstances, the applicant has been granted post-arrest bail in the sum of Rupees One Million to the satisfaction of the learned trial court. These are the reasons for my short order dated 19-02-2025.

(KHADIM HUSSAIN SOOMRO)
JUDGE

Approved for Reporting

Zahid