

IN THE HIGH COURT OF SINDH AT KARACHI

Before: **Mr. Mohammed Karim Khan Agha-J.**

Cr. Bail Application No. 762 of 2017

Majid Baloch s/o Muhammad Moosa Baloch

Vs.

The State

Date of hearing:	20.6.2017
Date of Order	23.06.2017
Applicant:	Through Mr. Ajab Khan Khattak, Advocate.
State:	Through Ms. Firdous Faridi, S.P.P. a/w Shahzad Wasti IO Custom Department.

ORDER

Mohammad Karim Khan Agha J: The applicant/accused namely, Majid Baloch son of Muhammad Moosa Baloch through the above bail application has sought post arrest bail in F.I.R. No.DEC02/17 registered under Section 6/9-B, PS Custom.

2. Brief facts as narrated in the F.I.R., are that the complainant SPO Syed Wasim Shah was performing his duty at International Departure Hall, JIAP, Karachi on the intervening night of 23rd / 24th February, 2017 when two passengers namely Mohammad Imran and Majid (the applicant) S/o Mohammad Moosa Balouch having Pakistan Passports and leaving for Colombo through Air Lanka Flight No.UL-1184 carrying baggage and upon asking if they were carrying any contraband narcotics in their luggage responded in the negative. Being dissatisfied with such response the

Complainant examined three soft top trolley suitcases of Danasty brand blue, brown and red color and one hand trolley bag Danasty brand black color and one hand trolley bag Triden brand black color in presence of two witnesses namely Irfan Asghar and Mohsin Malik, SPOs and the frames of above trolley suitcase and hand trolley bags were pierced with a sharp tool which showed light brown heroin powder cleverly concealed in the pipe frame of trolley suitcases and hand trolley bags after wrapping it in cellophane and all the suitcases and hand trolley bags which resulted in the recovery of light brown heroin powder which upon weighing was found 930 grams (net). The recovered heroin powder was instantly tested with a Narcotic Testing Kit which gave positive inference and three representative samples each weighing 10 grams were withdrawn and sealed for the purpose of chemical analysis whereas all the remaining stuff was seized under a proper memo. Investigation was entrusted to SPO Shahzad Wasti.

3. After usual investigation, the challan was filed against both the accused persons namely Mohammad Imran and Majid (the applicant) s/o Mohammad Moosa Balouch and the matter is now pending before the trial court.

4. In essence the applicant contended that the applicant was entitled to post arrest bail as there was no recovery from the applicant, that only 3 samples of 10 grams each had been taken as samples from the recovered amount which had not been properly separated, that the case based on the weightage fell within the non prohibitory clause as per

sentencing guidelines laid down in **Ghulam Murtaza's case** and as such for all the above reasons the applicant was entitled to be granted post arrest bail. In support of his contentions learned counsel for the applicant placed reliance on **Ateeb ur Rehman @ Atti Mochi v. The State and others** (2016 SCMR 1424), **Ghulam Murtaza and another v. The State** (PLD. 2009 Lahore 362)

5. On the other hand learned special prosecutor for customs vehemently opposed the grant of post arrest bail to the applicant and stressed that the applicant had been caught red handed, the substance concerned was heroin and the chemical report had proved positive and as such there was more than sufficient material on record to connect the applicant to the offense for which he had been charged. In support of her contentions learned special prosecutor has placed reliance on **Nazar Hussain v. The State** (2007 YLR 1601 Karachi) and **Muhammad Siddique v. Imtiaz Begum and 2 others** (2002 SCMR 442).

6. I have considered the arguments of the learned counsel for the applicant and special prosecutor for customs, perused the record and considered the relevant case law.

7. I am of the considered view that the applicant has not made out a case for post arrest bail for the following reasons; that the applicants bail before the trial court has already been dismissed by a well reasoned order dated 03-05-2017 which requires no interference with; that at the bail stage only a tentative assessment of the material is permissible and not a deep appreciation of the same and as such the question

of the amount of sample cannot be gone into at this stage as it requires a deeper appreciation of the evidence; that the applicant was caught red handed at the airport attempting to smuggle heroin in an ingenious manner which is a grave crime especially as he was trafficking the heroin abroad which would have brought both dishonor and disgrace to the Country; that the recovery was made at the airport concealed in luggage and thus there is no chance that the narcotic was foisted on him; that no enmity has been alleged between the customs officials and the applicant; that the chemical report has proved positive; that with regard to the question of joint recovery this is permissible under the law as was held in **Nazar Hussain's case** (Supra); that with regard to the offense falling within the non prohibitory clause I am of the view that as per findings of the Supreme Court in the case of **Socha Gul V The State** (SCMR 2015 1077) (which distinguished **Ghulam Murtaza's case** (Supra) in terms of the use of the sentencing guidelines for the grant of bail) and held that bail should be granted sparingly in narcotics cases bearing in mind Section 51 of the Control of Narcotic Substances Act 1997 and the fact that as per **Socha Gul's case** (Supra) the offense **amounts to a crime against society** the appellant is not entitled to bail based on the particular facts and circumstances of this case despite the case falling within the non prohibitory clause. This is because this is a borderline case where the recovery is only 70 grams below the prohibitory clause threshold and the heroin has most probably attempted to have been smuggled/trafficked at such a level in order to deliberately avoid the consequences of Section 9 © CNSA which would have brought into play the

prohibitory clause especially as it appears that the applicant is a frequent traveller to Sri Lanka and other countries and most probably a regular drug smuggler/trafficker and as such such practices must be discouraged which have the potential to bring disgrace and dishonor to the Country and as already mentioned is a heinous offense which is also a **crime against society**. Furthermore, as mentioned above as per **Socha Gul's case** (Supra) the **Ghulam Murtaza case** (Supra) guidelines on sentencing are no longer applicable at the bail stage.

8. As such for the above reasons the applicant's application for post arrest bail is dismissed

9. However, I note that the applicant has been in custody for around 2 months and that the charge has not as yet been framed against him and there are only 3 PW's in this case and as such I direct the trial court to decide this matter within 3 months of the date of this order. The office is directed to immediately send a copy of this order to the concerned trial court for compliance.

10. Needless to say that this order shall have no effect on the trial proceedings which will be decided on merit by the learned trial judge based upon the evidence placed before it.

11. The bail application stands disposed of in the above terms.