

HIGH COURT OF SINDH, KARACHI

Cr. Bail Application No. 1216 of 2016

Date	Order with signature of the Judge
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APPLICANT : Muhammad Hanif through Mr. Aijaz Farooq Advocate

RESPONDENT : The State through Mr. Habib Ahmed, Special Prosecutor, ANF

Date of hearing : 14.10.2016

Date of Order : 14.10.2016

ORDER

Muhammad Humayon Khan, J:-Applicant Muhammad Hanif Son of Shafi Muhammad is facing trial under Section 6-9-C/14/15 CNS Act, 1997 vide FIR No. 706 of 2016 registered at Police Station ANF-Clifton, Karachi.

2. Earlier bail application filed on behalf of the above-named accused was rejected by the learned Judge, Special Court-II (CNS) Karachi, by Order dated 02-08-2016.

3. Brief facts of prosecution case are that Inspector SHO Tahir Ahmed of PS ANF Clifton, Karachi, received information on 16-02-2016 that narcotic smugglers Qasim and Nasir alongwith his agent Muhammad Hanif Khan would smuggle the huge quantity of narcotic through oil tanker bearing registration No. TAA-544, orange in color, in between 1200 night to 0200 hours, therefore, raiding party was constituted and reached near Raees Goth, Baba Bolan Hotel, Main Hub River Road, Karachi, and at about 0130 hours said oil tanker was seen coming from Karachi, which was stopped and the driver was apprehended and the persons, who were present at hotel as well

as passerby, were asked to act as witnesses but they refused due to fear of narcotic paddlers, therefore, ASI Nawab Alam and PC Manzoor were nominated as witnesses. Upon inquiry, driver disclosed his name as Muhammad Hanifson of Shafi Muhammad and after some prevarication he admitted about the presence of narcotics in the secret cavities of the cabin of oil tanker and upon his pointation the secret box of the oil tanker checked through the instruments and lot of plastic sacks were seen. Upon counting, it were 200 sacks in yellow color and when each sack was checked 20/20 packets of Charas recovered from each sack and upon weighing each packet was one/one Kg. and total weight of the Charas was 4000 Kgs. and from each slab of all the packets 10/10 grams meaning thereby 20 grams was separated for the purpose of chemical examination and sealed in the brown envelopes and marked Serial Nos. 1 to 4000, and all the sacks were also sealed. Upon personal search of the accused from right side pocket, cash Rs. 1200/-, color copy of CNIC, cellphone alongwith sim were recovered. Accused disclosed that the actual owner of the Charas were Qasim and Nasir, resident of Pasni, Balochistan. Vehicle alongwith narcotic was handover by person of Qasim and Nasir at Gulbai, Hawksbay Road, Karachi, and the Charas was sent by Arif Khan from Peshawar, hence instant FIR.

4. I have heard the learned counsel for the applicant as well as the learned Special Prosecutor ANF and perused the material available on record.

5. Learned counsel for the applicant contended that accused is innocent and has been falsely implicated in this case. He further submitted that there is inordinate delay in lodging FIR and no

plausible explanation is brought on record. He further stated that IO failed to arrest main accused, who have been shown as absconder in charge sheet under Section 512 Cr. P.C. He further stated that there is no direct evidence connecting the applicant with the commission of alleged offence. Learned counsel further argued that despite availability of a large number of people, no any private person was associated during the recovery proceedings. He lastly submitted that it is a case of further enquiry and therefore bail application is fit to be allowed. In support of his arguments, the learned counsel for the applicant relied upon the cases of (i) Pervaiz Ahmed Vs. The State (PLD 2008 Karachi 14) and (ii) Gulab Din Vs. The State (2013 P Cr. L J (Peshawar) 1160).

6. On the other hand, the learned Special Prosecutor opposed the grant of bail to the applicant and contended that a huge quantity of 4000 Kgs. Charas has been recovered from the oil tanker upon the pointation of the accused, who had conscious knowledge. He further submitted that the offence fall within the prohibitory clause, therefore, applicant is not entitled for grant of bail. He finally submitted that final challan has already been submitted before the Court and co-accused Nasir, Qasim and Arif Khan have been shown absconder and ANF has been making efforts to arrest them. In support of his arguments, he relied upon Section 25 of the Control of Narcotic Substances Act of 1997 (hereinafter referred to as " C.N.S. Act of 1997").

7. Perusal of the record discloses that the oil tanker was stopped by the ANF Police on receipt of spy information. The accused, who was driver, deboarded therefrom and he admitted about the presence of narcotics in the secret cavities of the cabin of oil tanker and upon

his pointation the secret box of the oil tanker was checked through the instruments and lot of plastic sacks were seen. Upon counting, it were 200 sacks in yellow color and when each sack was checked 20/20 packets of Charas recovered from each sack and upon weighing each packet was one/one Kg. and total weight of the Charas was 4000 Kgs. and from each slab of all the packets 10/10 grams meaning thereby 20 grams was seperated for the purpose of chemical examination and sealed in the brown envelops and marked Serial Nos. 1 to 4000, and all the sacks were also sealed.

8. The applicant accused, being the driver of the vehicle is supposed to be custodian of the same. Thus, merely shrugging off the shoulders by the accused that he had no conscious knowledge of what, was there in the secret box of the oil tanker, is a self-defeating argument. Narco-trade has become a lucrative business and when its one trip can fetch millions of rupees to a person, then many people have fallen prey to such temptation and the applicant accused prima facie appears to be no exception. The applicant accused is supposed to be in possession of the Narcotic kept in secret cavities because he was incharge of the vehicle and being driver, the applicant accused was an exclusive possession of the oil tanker, therefore, he is reasonably connected with the presence of 4000 Kgs. Charas kept in the secret cavities of the oil tanker. Keeping in view the quantity of Charas, the offence falls under the prohibitory limb of Section 497

Cr. P.C.

9. The offence, for which the applicant accused has been charged, falls under Section 9 (c) of CNS Act of 1997, as the quantity of

Charas recovered is 4000 Kgs. It is pertinent to mention here that offences punishable under C.N.S. Act of 1997 are by its nature heinous and considered to be the offences against the society at large and it is for the reason that the statute itself has provided a note of caution under Section 51 of C.N.S. Act of 1997 before enlarging an accused on bail in the ordinary course. When I refer to the standards set out under Section 497, Cr. P.C. for grant of bail to an accused involved in an offence under Section 9 (c) of C.N.S. Act of 1997. Needless to mention here that a person accused of spreading a deadly poison i.e. the narcotics, in any society, is not the kind of person who qualifies for the grant of any discretionary relief unless such a person could demonstrate that he was entitled to the grant of bail on account of the reasons mentioned in Section 497 (2) Cr. P.C. No such grounds were shown to exist in the present case which could persuade me to allow bail to the applicant. Reliance can be placed upon the case of Socha Gul Vs. The State (2015 S C M R 1077).

10. It has been repeatedly held by the Hon'able Supreme Court of Pakistan in various reported cases that members of the public are reluctant to offer themselves as witnesses in criminal cases and that in the circumstances no adverse inference could be drawn against the prosecution for not associating such like persons as witnesses. Needless to say that the members of the Police force are competent witnesses in the eyes of law and could be credited with veracity unless it could be demonstrated that they are false witnesses and had maliciously accused an innocent person of the commission of an offence for ulterior motives. Reliance can be placed upon the case of Afzaal Ahmed Vs. The State (2003 S C M R 573).

11. The learned counsel for the applicant relied upon the cases of (i) Pervaiz Ahmed Vs. The State (PLD 2008 Karachi 14) and (ii) Gulab Din Vs. The State (2013 P Cr. L J (Peshawar) 1160). I have carefully gone through both the cases, which are not applicable to the facts and circumstances of the instant matter.

12. Considering the facts and circumstances of the instant case, I came to the conclusion that the applicant has failed to make out his case for grant of bail, therefore, this bail application was dismissed by me by short order dated 14.10.2016 and the above are the reasons for the said short order.

13. The observations made hereinabove are tentative in nature and shall not influence the Trial Court while deciding the case of the applicant/accused on merits.

JUDGE