

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 360 of 2018

Applicant : Babar Jameel through Mr. Imdad Khan Advocate.

State : Mr. Habib Ahmed Special Prosecutor ANF.

Date of hearing : 07.04.2018.

ORDER

Adnan-ul-Karim Memon, J. – The Applicant namely Babar Jameel is seeking post arrest bail in F.I.R No.D-0307017/2017 registered at Police Station A.N.F-II, Karachi for offences punishable under section 6 read with section 9 (c), 14 and 15 of Control of Narcotic Substances Act, 1997.

2. Brief facts of the prosecution case are that on 3.4.2017 at about 1820 hours Inspector Iftikhar Hussain of Police Station Anti-Narcotics Force, Muhammad Ali Society, Korangi, Karachi lodged FIR against the Applicant who is serving in Pakistan Post Office with the allegation that he attempted to smuggle prohibited tablets in cargo to Cambodia through Flight No. TG.0342/760584; that Police Party received information and reached at about 12:30 a.m. at ANF counters, Jinnah International Airport Cargo Complex; that Applicant (Babar Jamil) was seen standing at the counter with blue colour nylon bag in his right hand and shipment documents; that he was apprehended at the spot. Police secured the prohibited material under proper Mushirnama and found that prohibited medicine (Diazepam) 10 mg volume, each bag

containing 220 strips, total 5500 strips, each strip containing 10 tablets, total 550000 tablets weighing 9.270 kilograms. The prohibited material was also sealed under proper Mushirnama for chemical examination. Mushirnama of arrest and recovery was also prepared; thereafter police lodged FIR under section 6 and 9-C, 14 and 15 of Control of Narcotic Substance Act, 1997 against Applicant and others. Investigating Officer recorded statements of prosecution witnesses, interrogated Applicant; got conducted chemical examination of recovered prohibited material and obtained its report on 11.4.2017. Finally, Investigating Officer submitted Charge Sheet on 19.4.2017 before Special Court for C.N.S. Karachi. The Applicant moved Bail Application No. 361 of 2017 in Special Case No. 306 of 2017 before the learned Trial Court which was dismissed vide Order dated 8.6.2017. The Applicant approached this Court twice by filing bail application No. 959 of 2017 and 1841 of 2017, both bail applications were dismissed with direction to the learned Trial Court to examine the material witnesses/ Investigating officer within the stipulated period but the learned Trial Court twice declined the bail to the Applicant. Applicant being aggrieved by and dissatisfied with the impugned order dated 15.11.2017, has filed the instant bail application on 08.03.2018. As per progress report dated 31.03.2018 submitted by the learned trial Court that charge has been framed against the applicant and others and the matter to be fixed for evidence of the prosecution witnesses. The learned trial Court has further apprised this Court that on 04.10.2017 PW was present but the case property was produced and since no further progress has been made in the case. Besides that the Presiding Officer is on leave on medical ground as he suffering from heart and Kidney problem and his open surgery is due.

3. Mr. Imdad Khan learned counsel for the Applicant has contended that Applicant was not aware about the prohibited medicine

in the cargo and was only directed to dispatch the sealed parcel by Senior Post Office Clerk; that alleged recovery does not fall within the definition of drug defined in Section 3(g) of Drugs Act, 1997; that recovered medicine is a registered medicine and the same is not a declared prohibited drug under section 6 and 9 of Control of Narcotic Substances Act, 1997. He next added that "Diazepam" is imported under the license issued by Ministry of Health, Government of Pakistan and is used for medical purposes; that per learned counsel Chemical Report says that "Diazepam" contains only 2% of narcotic substance whereas 98% contents are medicated therefore, "Diazepam" cannot be labeled as a narcotic substance. The learned counsel for the applicant has emphasized that Tablet Diazepam is a medicine used for treatment of psycho related diseases, the chemical formula of Diazepam is C-16H13CIN20, having following ingredient:-

Benz diazepam 2-1

Tablet Diazepam of 10 mg contains following inactive ingredients namely Anhydrous Lactose (combination of water and milk), Corn Starch, Pregelatinized (purified) starch, Calcium Stearate (a Kind of salt or Steric Acid) all these ingredients are come in the category of nutrition's i.e (diet) and recommended by the doctors useful for human body to increase the immunity against the disease. While benzodiazepam 1-2% is a narcotic used for eradication of anxiety, frustrations, depression and relaxation of nervous system in human beings.

Table Diazepam contains only benzodiazepam 1 to 2 % and rest of the 98% ingredients are nutrition's, therefore, the alleged recovery of 9.2 kg diazepam if calculated/weighed in terms of narcotics becomes 180 grams which does not attract section 6/9-C of CNS Act 1997.

Learned counsel for the Applicant in support of his contention has placed reliance upon the case of Wajid @ Waji vs. The State (2016 P Cr.L.J. 831), Shahid Ali Laghari vs. The State (2014 P.Cr.L.J. 427), Tafseel Hussain @ Mantoo vs. The State (2006 YLR 579), Muhammad

Saleh vs. The State (1987 P.Cr.L.J. 1411), Sakina Bibi vs. The State (2008 SCMR 1111) and Muhammad Hanif vs. The State (SBLR 2016 Sindh 29), Gul Hassan Panhiyar Vs. The State (1997 SCMR 390) and argued that the direction of this Court to the learned trial court has not been complied with for which the applicant cannot be kept behind the bar for indefinite period. He further relied upon the case of Agha Jehanzeb Vs. NAB and others (2005 SCMR 1666), Nabi Sher Vs. The State (2002 MLD 504), Ghulam Rasool Vs. The State (2006 MLD 630), unreported order dated 27.08.2013 passed by this Court in Cr. Bail Application 933 of 2013. He lastly prayed for allowing the instant Bail application.

4. Mr. M. Habib Ahmed, learned special prosecutor, ANF opposed grant of bail to the Applicant and argued that this Court has dismissed the bail application of the applicant on merit vide order dated 14.07.2017, therefore no fresh ground has been agitated by the learned counsel for the applicant to claim for bail; that the learned trial Court has assigned valid reasons and declined the bail to the Applicant vide order dated 15.11.2017; that the ground which has been taken by the learned counsel for the Applicant has already been taken care of and considered; that noncompliance of the direction of this Court does not entitle the applicant for the concession of bail particular in Narcotics cases, however he agreed that the direction may be given to the learned trial court to examine the Investigating Officer on the point of diazepam (Psychotropic substance), whether the recovery made from the Applicant contains Tablet Diazepam contains only benzodiazepam 1 to 2 % and rest of the 98% ingredients are nutrition's, of 9.2 kg diazepam if calculated/weighed in terms of narcotics becomes 180 grams? ; that to appreciate the above factum of the case evidence is required as such the applicant is not entitled for the concession of bail.

5. I have heard learned counsel for the Applicant, learned special prosecutor for A.N.F, and perused the material available on record as well as case law cited at the Bar.

6. I am cognizant of the fact that this Court vide order dated 14.07.2017 dismissed the bail application of the applicant on merit with the following observation:-

“7.Record reflects that Applicant is arrested red-handed with possession of 9.270 kilograms of Diazepam Tablets (Psychotropic Substances). Chemical Examination Report supports the prosecution case. The recovery of Diazepam tablets was duly witnessed by the police officials who are as good witness as any other person and who had no ostensible reason to falsely implicate the Applicant in a case of present nature. Case of the Applicant is hit by prohibition clause contained in Section 51 of the Control of Narcotic Substances Act, 1997. Diazepam is mentioned in section 2 (za) at serial No. 24 of schedule of Control of Narcotics Substance Act, 1997 which comes within the definition of Psychotropic substances and is prohibited to possess and transport dispatch, deliver on any terms whatsoever. Applicant, at this juncture has failed to substantiate his claim that alleged recovered Diazepam (Psychotropic substances) is for the exceptions as provided in the law, therefore no case of further enquiry is made out.

8. I have noted that Applicant has failed to produce any material to suggest that he is falsely implicated in the alleged crime. Merely saying that Applicant only performed duty as porter to dispatch the cargo is not sufficient to discard the prosecution story as false, which is even otherwise a factual controversy and, at bail stage only tentative assessment of the record is to be made.

9. The offence falls under section 9 (c) of Control of Narcotic Substance Act, 1997 which is punishable with life imprisonment.

10. The case law cited by the learned counsel for the Applicant is distinguishable from the facts and circumstances of the case in hand.

11. In view of the above facts and circumstances the Applicant has not made out a case for grant of bail at this stage therefore, the instant bail application is dismissed.

12. The findings mentioned above are tentative in nature which shall not prejudice the case of either

party at the trial stage. However, the learned Trial Court is directed to record evidence of the material witnesses within a period of two months where after the Applicant will be at liberty to move fresh bail application before the learned Trial Court on fresh ground, if any.

13. That above are the reasons of short order dated 14.7.2017.

7. The learned trial Court vide order dated 15.11.2017 dismissed the bail application of the applicant by relying upon the chemical report of secured diazepam Tablets recovered the personal possession of the applicant, which has come in positive.

8. I am of the considered view that once the bail application of the applicant is declined on merit, contrary view cannot be taken until and unless there is fresh ground available with the applicant. since the learned trial Court has not examined the material witnesses after framing of the charge, I am of the considered view let the learned trial Court be given two months more time to examine the Investigating officer / witnesses so that the applicant be able to move fresh bail application on fresh ground if any available to him under the law.

9. The learned trial Court has considered all the grounds as agitated by the learned counsel for the Applicant in the instant Bail Application.

10. I am of the considered view that the learned trial Court needs to take appropriate measures to procure attendance of Prosecution Witnesses enabling to proceed with the trial and to conclude the same within a reasonable time.

11. In view of above facts and circumstances of the case Applicant has failed to make out case for grant of bail at this stage.

12. The above observation is tentative in nature which shall not prejudice the case of either party at the trial.

13. From the forgoing, the learned Trial Court is directed to record evidence of the Investigating Officer / witnesses within a period of two months, where after the Applicant will be at liberty to move fresh Bail Application before the learned Trial Court on fresh ground if any and the learned trial Court shall decide the same on merit.

14. I expect from the learned trial Court that the direction of this Court, particularly in the bail matters shall be adhered to in future and valid reasons are to be assigned, if the trial is not concluded within the stipulated time.

15. That above are the reasons of my short order dated 07.04.2018, whereby I have dismissed the bail application of the applicant.

JUDGE

Karachi

Dated: - 10.04.2018

Shafi Muhammad P.A