

THE HIGH COURT OF SINDH KARACHI

Cr. Bail Application No. 459 of 2020

Applicant/Accused : Asad Iqbal son of Muhammad Ashraf through Mr. Sharafuddin Jamali, Advocate.

The State : Through Ms. Abida Parveen Channar, Special Prosecutor ANF.

Date of hearing : 29-04-2020

Date of order : 29-04-2020

ORDER

Adnan Iqbal Chaudhry J. - The Applicant/accused seeks bail in FIR No.08/2019 registered under sections 6 and 9(c) of the Control of Narcotic Substances Act, 1997 at P.S. ANF-I, Karachi, on 27-01-2019 at 20:30 hours.

2. Per the FIR, the vehicle driven by the accused was stopped at Manghopir Road by a police party lying in wait on spy information; that three trolley bags on the rear seat yielded a total of 78 packets of charas weighing 84 kg; that on refusal of locals, constables of the police party were made witnesses to the search; that 10 grams from each packet were sealed separately for chemical examination before the entire quantity seized was sealed on the spot; and that the accused disclosed that he was delivering the charas to a person who worked for one Saif-ur-Rehman.

3. On the merits, learned counsel for the accused submitted that the fact that the accused had been picked-up from elsewhere and the vehicle and charas were foisted on him, could be gauged from the following facts: the FIR records the presence of a lady police constable in the police party that left the P.S., but the FIR does not disclose why a lady constable was needed; that the FIR does not mention the time at which the police party reached the spot nor the time consumed in the search; that the person in whose name the vehicle was registered was not investigated; and though the police party claimed that it had received spy information well in advance, there is no explanation

why private witnesses to the search could not be arranged. Learned counsel relied on *Abdul Jalil v. State* (2000 PCrLJ 760) and *Rehmat Wali v. State* (PLD 2006 Peshawar 201) to submit that the facts pointed out by him were sufficient to raise doubt.

4. On the medical ground, learned counsel for the accused relied on the medical reports of the prison medical officer and the Medical Board constituted to examine the accused. He submitted that the said reports manifest that the accused is a heart patient and thus his continued detention in jail was hazardous to his life. To support bail on the said medical ground, learned counsel relied on *Manzoor Ahmad Watto v. The State* (2000 SCMR 107) and *Zakhim Khan Masood v. The State* (1998 SCMR 1065).

5. The leaned Special Prosecutor opposed the bail on both counts. She submitted that the arguments advanced on the merits are for determination by the trial Court; and though the accused was a heart patient, he was only of 42 years of age and as per the opinion of the Medical Board, he can be treated at a hospital as an out-patient.

6. Heard the learned counsel and perused the record.

On a tentative assessment of the facts, given the quantity of 84 kg charas said to be recovered from the accused, it is difficult at this stage to say that the same may have been foisted. Apparently, the contraband was sealed at the spot after taking samples, and the samples were sent to the chemical examiner the next day on 28-01-2019. The chemical report states that the samples tested positive for charas. No ground was urged to doubt the safe custody of the samples. The facts that learned counsel for the accused desires this Court to notice are such that would require a deeper appreciation of the evidence which is not possible at the bail stage. Both the cases of *Abdul Jalil* and *Rehmat Wali* cited by learned counsel *supra* were judgments in appeal and not bail orders.

7. Though the accused was taken from jail to the NICVD for angioplasty on 31-10-2019, but thereafter, a Medical Board was

constituted who examined the accused at the Services Hospital on 12-02-2020 and their opinion was that:

“Accused Asad Iqbal s/o Muhammad Ashraf had undergone primary PCI-LAD in October 2019 with EF of 30% to 35%. Now at present he is in mild heart failure that is routine complication of prior M.I. He can be managed as out-patient on optimized medical therapy. He is further advised to follow up in OPD after two weeks with CBE, UCE, LTFs and previous angiography report and CD.

He is advised following treatment :-

1. Tab. Lowplate Plus 75 mg 1+0+0
2. Tab. Concor 10mg 1+0+0
3. Tab. Sacvin 100mg 1+0+1
4. Tab. Rosubar 20mg 0+0+1
5. Tab. Imdur 60mg 1+0+0
6. Tab. Spiromide 40mg 1+0+0
7. Tab. Lasix 40mg 0+2+0”

8. A fresh medical report was then called by this Court from the medical officer of the prison, and he reported that :

“On 25-04-2020 he was again examined by cardiologist who continued his previous medicine regime. Which is as under:

*Tab. Lowplate Plus 75 mg 1+0+0 Tab. Concor 10mg 1+0+0
Tab. Sacvin 100mg 1+0+0 Tab. Rosubar 20mg 0+0+1
Tab. Imdur 60mg 1+0+0 Tab. Spiromide 40mg 1+0+0
Tab. Lasix 40mg 0+2+0”*

The current vitals are as under:

*BP: 160/110 Temp 98
RBS: 225 Pulse 88*

It is pertinent to mention here that in case the condition of the UTP gets worse it will be very difficult to manage inside jail hospital.”

9. The medical reports referred to above were perused with the assistance of the learned Special Prosecutor who had also taken some time to consult a doctor to understand the medical jargon. The opinion of the Medical Board in February 2020 was essentially that though the accused had undergone angioplasty to treat a decrease in the ejection fraction of the heart, his condition thereafter was common in patients after such procedure, and thus there was no need to admit him for any specialized treatment. It appears that the state of ‘mild heart failure’ mentioned in the report refers to a state where the heart is not pumping blood as efficiently. Be that as it may, the treatment prescribed by the Medical Board for the accused’s heart condition

was medication only. There is no complaint that he is not receiving such medication in jail. Though in the recent report called from the prison medical officer he has expressed some concern in treating the accused in jail if his condition deteriorates, but he does not go on to recommend that the accused be shifted to a hospital. The cardiologist who examined the accused on 25-04-2020 also did not raise any alarm for now, rather he has advised to continue with the medication prescribed by the Medical Board.

10. Thus none of the medical reports thus far state that the continued detention of the accused in jail is likely to endanger his life, nor do those reports recommend any special medical treatment outside the jail. Therefore, the cases of *Manzoor Ahmad Watto* and *Zakhim Khan Masood supra* are of no help to the accused as in those cases the medical reports categorically stated that the continued detention of the petitioners in jail was likely to be hazardous to their life. On the other hand, in *Muhammad Arshad v. The State* (1997 SCMR 1275) the Supreme Court has held that to grant bail on medical ground there must exist strong reason to believe that despite advanced medical technology, availability of medicines, the treatment and care of the accused was not possible in jail. The instant case is not such a case.

11. For the foregoing reasons, this is not a fit case for grant of bail. Bail is declined. However, the Jail Superintendent shall ensure that the medical treatment and facility advised by the prison medical officer is made available to the accused. The trial Court shall also endeavor to expedite the trial.

Needless to state that the observations herein are tentative and nothing herein shall be construed to prejudice the case of either party at trial.

JUDGE

SHABAN/PA*