

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Amjad Ali Sahito

Criminal Bail Application No.645 of 2020

Applicants : Shahbaz Ali Khan s/o Mumtaz Ali Khan
Through Syed Mahmood Alam Rizvi,
Advocate alongwith Mr. Asghar Ali
Azad, Advocate

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

Date of hearing : 12.08.2020

Date of order : 12.08.2020

ORDER

AMJAD ALI SAHITO, J -- Through this Bail Application, the applicant/accused seeks post-arrest bail in Crime No.06/2020 registered under Sections 6/9-C CNS Act, 1997 of PS ANF Clifton, Karachi (Spl. Case: 21/2020), after his bail plea has been declined by the learned Judge, Special Court-II, (CNS), Karachi vide order dated 26.03.2020.

2. Brief facts of the prosecution case are that on 10.02.2020 at about 1300 hours SI Qamaruddin of PS ANF Clifton lodged the FIR and alleged that he received spy information through high ups that international smugglers Akhtar Ali son of Amanullah, r/o Balouch Goth, Gulshan Iqbal, Karachi and Farooq Dashti son of Abdul Sattar, r/o Lyari, Karachi through their agents namely Mohammad Younus, Shahbaz Ali Khan and Mohammad Azeem would smuggle huge quantity of narcotics from SAPT Karachi to abroad Netherland through duly hold container No. UACU-4127650, therefore, a raiding party was constituted comprising on him and reached at about 2030 hours at SAPT

Karachi and met with ANF date staff alongwith them reached at ANF examination area at about 2040 hours alongwith spy who pointed out five persons amongst them namely Muhammad Younus, Muhammad Azeem and Shahbaz Ali Khan for smuggling the narcotics through container in question, the peoples present there were asked to act as witness, but they excused, therefore, from the raiding party PC Ahmed Aftab and PC Adnan were nominated as witnesses and inquired the names of the persons present near the container and the first person disclosed his name as Mohammad Younus son of Muhammad Yousuf, r/o Garden West, Karachi, 2nd person disclosed his name as Mohammad Azeem son of Ali Mohammad, r/o soldier Bazar, Karachi, whereas Mohammad Younus and Mohammad Azeem disclosed themselves owners of the consignment lying the container and 3rd person disclosed his name as Shahbaz Ali Khan son of Mumtaz Ali Khan, r/o Muslim Town, North Karachi and disclosed himself as exporter/owner of Evergreen Impex and 4th person disclosed his name as Shahzad Patel and companion of Shahbaz Ali Khan, whereas 5th person disclosed his name as Abdul Maroof son of Abdul Hanif the clearing agent of such consignment and handed over the documents of such container to SI Qamaruddin which scrutinized and consisting upon consignment note, Weboc, one photocopy of undertaking of Shabaz Ali Khan addressed to the ANF, one photocopy of commercial invoice of Evergreen Impex, two copies of Form-E and two copies of GD, when the seal of the container was cut down and removed the cardboard cartons which were found 199 on counting and in each carton quilts were found and upon inquiry about the narcotics accused Mohammad Younus and Mohammad Azeem after some prevarication admitted about the concealment of narcotics in the guarders of the container's floor and the container was turned down through crane and

on the pointation of Mohammad Younus and Mohammad Azeem iron sheet was cut down and found 15 guarders and from each guarder four iron boxes recovered, which were opened through tools and checked and from 42 iron boxes heroin was recovered in transparent polythene bags whereas from remaining 18 iron boxes Opium packets wrapped in yellow adhesive tape recovered and the weight of 41 polythene bag was 1070 grams each whereas 42 polythene bag was found 1130 grams heroin and total weight of heroin was 45Kgs gross and from each polythene bag samples of 10/10 grams each were withdrawn and sealed whereas rest of heroin also sealed in two white nylon sacks, whereas the weight of recovered Opium packet was carried out and weight of each packet was found 1835 grams and total weighing 33.030 Kgs and from each packet of Opium sample of 10/10 grams were withdrawn and sealed it and the rest of the Opium packets were sealed in the white nylon sack. Whereas packing material 60 iron boxes and the cutting sheet for the purpose of proof sealed in the white nylon sacks and from personal search of accused Mohammad Younus from pocket of wearing pant Rs.500/-, two cell phones with sims, one black color wallet recovered, from right side pocket of accused Mohammad Azeem Rs.1000/-, original CNIC, driving license, international driving permit in his name, one cell phone with sim and one black color wallet recovered whereas from the search of accused Shahbaz Ali Khan from right side pocket Rs.1100/-, original CNIC, one cell phone with recovered. Clearing agent Abdul Maroof and Shahbaz Patel were bound down to appear at PS Clifton to record their statements on 11.02.2020, whereas 199 carboard cartons along with quilts were put back in the container and the container was sealed so also put back in the container and the container was sealed so also put a lock on it and memo of arrest and

recovery was prepared at the spot, obtained signatures of the witnesses and on returning at PS FIR was lodged.

3. Learned counsel for the applicant/accused has mainly contended that applicant/accused is innocent and has falsely been implicated in this case; that from the perusal of contents of memo of mashirnama of recovery and arrest so also FIR, no case is made out against the applicant; that during the investigation, it was established that the applicant being sole proprietor, doing his business of export of Islamic books; that the applicant/accused had obtained the Form-E of the said consignment from the concerned bank upon request of co-accused Muhammad Azeem, which was provided to him against the commission as per market practice; that the applicant does not know the narcotics in the container. He lastly prays for grant of post-arrest bail to the applicant/accused. In support of his contentions, he has relied upon the following cases:

- (1) *Shoaib Sultan vs. The State in Crl. Misc.Application No.162 of 2018*
- (2) *Abdullah Umer vs. The State in Crl. Bail Application No.808 of 2014*
- (3) *Khan Zeb vs. The State through Special Prosecutor ANF (2020 SCMR 444)*
- (4) *The State vs. Muhammad Saleem Khan (2011 SCMR 863)*
- (5) *Javed vs. The State (2017 SCMR 531)*
- (6) *The State vs. Aleem Haider (2015 SCMR 133)*

4. On the other hand, learned Special Prosecutor ANF has vehemently opposed for grant of bail on the ground that huge quantity of narcotics is recovered from the applicant/accused as the same was being sent to the Netherlands, therefore, he is not entitled to the concession of post-arrest bail. She files an undertaking showing that the applicant/accused was a partner of M/s. Evergreen Impex.

5. I have heard the learned counsel for the parties and perused the material available on record. From the perusal of record, it appears that the complainant has received spy information that smugglers Akhtar Ali and Farooq Dashti through their agents namely Mohammad Younus, Shahbaz, Ali Khan and Mohammad Azeem, after clearance, would smuggle huge quantity of narcotics by a container bearing No.UACU-4127650 from SAPT to Netherland. Based on such information, ANF police reached at the pointed place where they found five persons amongst the present applicant/accused Shahbaz Ali Khan, who was standing near the container and in the presence of witnesses, the container was opened and from the secret cavities of the container, they found 45 kg of heroin and 33.030 Kg Opium. In the instant case, representative samples were sent to the office of chemical examiner for a chemical analysis whose report in this regard is **positive**.

6. The presence of the applicant at the place of recovery has not been denied by the learned council for the applicant, however, learned council has pleaded that the applicant was not having conscious knowledge. He further pleaded that the applicant/accused has simply issued the Form-E, which is not an offence and it's a routine work, having no force. The Control of Narcotics Substance Act, 1997 is comprehensive in nature and covers all the acts and omissions whereby one physically possesses or has been in control of narcotics for any purpose, including import into or export from. There should be no reluctance in saying that in matters of import to or export the huge quantity of narcotics the question of guilt would not be depended upon establishing physical possession but the circumstances establishing active control or knowledge or that accused otherwise dealt with such recovered narcotics. Further issuance of Form-E is not an offence but in this case, the applicant/accused has given an

undertaking to the Station Incharge, ANF South Asia Pakistan Terminal, Karachi that the container is free from any Narcotics/Contra banded items. It is appropriate to reproduce undertaking given by the applicant/accused which is as under:-

To,
The Station In Charge ANF
South Asia Pakistan Terminal
Karachi.

Subject: **UNDERTAKING**

I **Shahbaz Ali Khan** S/o **Mumtaz Ali Khan** hereby undertake as a Partner of **M/s. Evergreen Impex** Export of Shipment 1x20 fit Container No.UACU4127650 of **Comforter**.

Our Company **M/s. Evergreen Impex** Export to AMESTERDAM, Netherland.

That the subject goods are free any Narcotics/Contraband Items.

I Bond and undertake myself if any Contra banded/Drug or Narcotics are found any reported in the goods.

It's packing or concealed in the container at any stage under rules and regulation made there under.

Further undertake that is Consignment contains Comforter and does not contain any contra banded items.

If found any contra banded other than declared, I will be fully responsible.

It is therefore requested to accept my undertakings for allowing shipment of goods.

For Evergreen Impex.

Name: **Shahbaz Ali Khan**

CNIC No.42101-1866602-9

Sing with Stamp:

7. Furthermore, the name of the applicant finds a place in the FIR, with his active role, the PWs in their 161, Cr.P.C. statements have fully supported the version of the complainant. At the bail stage, only tentative assessment is to be made and a deeper appreciation of evidence is not required. Prima facie, sufficient material is available on the record to connect the accused with the commission of the alleged offence.

8. In view of the above learned counsel for the applicant has failed to make out a case for grant of post-arrest bail. Accordingly, the instant Bail Application is **dismissed**. The case-law cited by the learned counsel for the applicant is

concerned; the same are not applicable in the instant case being on distinguishable facts.

9. Needless to mention here that the observations made hereinabove are tentative and would not influence the learned trial Court while deciding the case of the applicants on merits.

Kamran/PA

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JUDGE