

# THE HIGH COURT OF SINDH KARACHI

## Criminal Bail Application No. 1197 of 2019

### For hearing of Bail Application.

Applicant : Azizullah Malik son of Hajan Khan Malik through Mr. Muhammad Akbar, Advocate.

Respondent : The State through M/s. Firdous Faridi, Special Prosecutor Custom and Chaudhry Waseem Akhtar, Assistant Attorney General for Pakistan alongwith I.O. namely; Imran Maqsoo.

Date of hearing : 25-11-2019

Date of short order : 25-11-2019

### ORDER

Adnan Iqbal Chaudhry J. - The Applicant, Azizullah Malik, alongwith his wife and niece, travelling to Saudi Arabia for *umra*, were arrested at the Jinnah International Airport, Karachi on 14-06-2019 and booked in FIR No. 18/2019 at P.S. Customs under sections 6, 7, 8 and 9(b) of the CNS Act, 1997 when a total of 200 grams of heroin power and a total of 565 grams of crystal amphetamine was recovered concealed in the handles and iron rods of three [03] trolley-bags being carried by the said 3 accused. Per the FIR, the weight of the drugs concealed in the trolley-bag carried by the Applicant was 50 grams of heroin and 210 grams of crystal amphetamine.

2. The charge-sheet dated 29-06-2019 nominated 3 additional persons as absconding accused namely, Abdul Qadir Mohal, Mohib Ali Mohal and Altaf Ahmed Malik, the latter being the brother of the Applicant, all of whom were implicated by the Applicant. Per the statement of the Applicant, he was a truck driver who was unemployed for some time; that to make ends meet, his brother, Altaf Ahmed Malik, introduced him to Abdul Qadir Mohal and Mohib Ali Mohal, who convinced the Applicant to carry drugs to Saudi Arabia

concealed by them in trolley-bags; and that Abdul Qadir Mohal paid the Applicant Rs.100,000/- and Saudi Riyal 1200 as expenses for his stay in Saudi Arabia with the promise to pay him a further sum of Rs.400,000/- on his return to Pakistan.

3. The Special Court-II (CNS), Karachi, vide order dated 24-07-2019 passed in Special Case No. 356/2019, granted bail to the Applicant's wife and niece primarily on the ground that they were ladies and it was a matter of further inquiry whether they had knowledge of the drugs concealed in the trolley-bags; but bail was denied to the Applicant on the ground that he was party to the plan; hence this bail application.

4. Learned counsel for the Applicant submitted that the Applicant was a long-time driver with the accused Abdul Qadir Mohal; as a reward for his services, he, his wife and niece were offered an all-paid *umra* trip by Abdul Qadir Mohal, who also provided the trolley-bags; and that the Applicant did not have knowledge of drugs concealed in the trolley-bags. Learned counsel submitted that the statement of the Applicant given in police custody had no legal value. He submitted that for the purposes of bail it is only the quantity recovered from the trolley-bag carried by the Applicant that should be looked at which was 260 grams (50 grams of heroin and 210 grams of crystal amphetamine); that the FIR does not disclose whether the drugs recovered were wrapped in polythene, and if it was, that may well make the case one of further inquiry as in the case of *Ateeb ur Rehman v. State* (2016 SCMR 1424). He also relied on the case of *Ghulam Murtaza v. The State* (PLD 2009 Lahore 362) to argue that given the quantity of 260 grams recovered from the Applicant's trolley-bag, even if the offence is proved against him, his sentence would be a short one.

5. The learned Special Prosecutor Customs and the learned Assistant Attorney General submitted that the Applicant had been arrested red-handed at the Airport trying to smuggle a narcotic drug

and psychotropic substance to a foreign country; that the charge-sheet shows that the statement made by the Applicant during interrogation had in fact been corroborated by facts investigated by the I.O. and that the Applicant had full knowledge of the drugs concealed in the trolley-bags; that there is sufficient evidence to believe that the Applicant was part of the drug syndicate of Abdul Qadir Mohal and Mohib Ali Mohal; and that in the facts of the case the entire 200 grams of heroin and 565 grams of crystal amphetamine can be said to be recovered from the Applicant.

6. Heard the learned counsel and perused the record.

Adverting first to the case of *Ghulam Murtaza v. The State* (PLD 2009 Lahore 362) relied upon by the Applicant's counsel; there a Full Bench of Lahore High Court had approved a sentencing standard for cases falling under section 9 of the CNS Act, 1997 to commensurate with the quantity of narcotic drug or psychotropic substance recovered from the accused. However, while that case provides a sentencing guideline for cases under section 9 of the CNS Act, 1997, that guideline would not figure in while considering bail lest that pre-empts the mind of the trial Court while determining the quantum of sentence upon conviction as so observed by the Supreme Court in *Socha Gul v. The State* (2015 SCMR 1077).

7. Per the charge-sheet, investigation has revealed that the visa and airline tickets of all accused had been arranged by the accused Abdul Qadir Mohal; that the Applicant was travelling with his spouse and his niece to give the impression of a family trip; that the CDR of the phone number in the use of accused Abdul Qadir Mohal showed that he was in contact with the Applicant at the time of the crime; that the accused Altaf Ahmed Malik and Mohib Ali Mohal had also proceeded to Jeddah, but on coming to know of the Applicant's arrest they changed their return flight to land at Lahore Airport and avoided arrest; that the accused Abdul Qadir Mohal and Mohib Ali Mohal were known to be drug traffickers operating a drug syndicate and were accused in similar drug trafficking cases were they were

also absconders. Therefore, when the facts investigated had corroborated the statement of the Applicant, the argument of the Applicant's counsel that the Applicant did not have knowledge of the drugs concealed in the trolley-bags and that his statement made during interrogation should be ignored, does not have force.

8. While learned counsel for the Applicant has questioned the weight of the drugs, he has not disputed the recovery, and if the accused ladies were ignorant of the drugs concealed in the trolley-bags, then there is force in the prosecution's submission that the entire recovery of 200 grams of heroin and 565 grams of crystal amphetamine (total 765 grams) can be said to be from the Applicant. For the said reason, reliance placed by the Applicant's counsel on the case of *Ateeb ur Rehman v. State* (2016 SCMR 1424) is in my humble view misplaced, for in that case the accused had disputed the recovery.

9. The principal accused and the alleged master-minds of the offence namely, Abdul Qadir Mohal and Mohib Ali Mohal, who are alleged to be drug traffickers and accused in similar other cases, are still absconding along with the brother of the Applicant. That the Applicant too may abscond, is more likely than not.

10. Though the case against the Applicant does not fall within the prohibitory clause of section 51 of the CNS Act, 1997, in my view it is still not a "fit case for the grant of bail" within the meaning of sub-section (2) of section 51 of the CNS Act, 1997; hence this bail application was dismissed vide short order dated 25-11-2019. Above are the reasons for the same. Needless to state, that the observations herein are tentative and nothing herein shall be construed to prejudice the case of either party at trial. However, it is expected that the trial Court will take immediate proceedings against the absconding accused and conclude the trial expeditiously within four months.

**JUDGE**

Karachi  
Dated: 26-11-2019