

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No.1658 of 2021

Date

Order with signature of Judge

For hearing of Bail Application.

15.09.2021

Mr. Sajid Karim Khaki, Advocate for the Applicant.
Mr. Muntazir Mehdi, Addl. Prosecutor General, Sindh.

ORDER

Muhammad Saleem Jessar, J:- Through this bail application, Applicant Abdul Bari seeks his release on post arrest bail in Crime No.129/2020 of P.S Sohrab Goth, Karachi, under Section 6/9-C CNS Act. The applicant preferred his bail plea before the first forum, which was turned down by means of order dated 16.08.2021; hence, he has approached to this Court through this Application.

Since the facts of the prosecution case are already mentioned in the FIR, which is annexed with Court file, therefore, there is no need to reproduce the same.

Learned counsel for the applicant submits that applicant was all along on post arrest bail granted to him by this Court in terms of order dated 06.04.2020 vide Criminal Bail Application No.320/2020 (available at page-25 of the Court file). He next submits that after furnishing surety, applicant was attending trial Court; however, due to his health issues as well as being out of city, he could not attend/appear before the trial Court for certain hearings, therefore, NBW was issued against him; consequently, he was taken into custody on 09.08.2021. He, therefore, submits that applicant repeated his bail plea before the trial Court which by means of order dated 16.08.2021 has been declined.

Learned Addl. P.G, Sindh appearing for the State, does not oppose the bail application on the ground that he was all along on bail granted to him by this Court.

Heard arguments and perused record. Admittedly, the applicant was all along on bail granted to him by this Court on merits. The second bail application moved before the trial Court was not dismissed on merits or on the ground of any misuse committed by him. Mere absence for certain dates could not be termed as misuse of the concession more particularly when he voluntarily surrendered before the trial Court and was committed to custody. By surrendering himself before the trial Court shows he (the applicant) had no wrong intention to abscond away. Hence, the plea taken by the trial Court while rejecting his bail application is to the effect he could not get suspended the operation of NBW issued by the trial Court, from this Court, therefore, was taken into custody, is not tenable. The absence on the part of applicant is for shorter time which in view of his incarceration from 09.08.2021 to date, is sufficient punishment, thus has been compensated enough. Reliance can be placed upon case of ZAHEER AHMED Versus The STATE (1983 P.Cr.L.J 2600). It will be appropriate to reproduce relevant para-4 of the order, which reads as under;_

“4. After hearing the learned counsel for the parties, I find that as for merits, the petitioner was allowed bail after arrest by the trial Court. As for the abuse of the concession of bail, I am of the opinion that is very much there but despite that I am inclined to grant him bail for the reasons that he voluntarily appeared before the learned Sessions Judge and moved application for his pre-arrest bail and thereafter he did appear before the trial Court. Furthermore, he is in jail for the last one month. To my mind this is sufficient extra punishment, he shall be released on bail provided he furnishes bail bond in the sum of Rs.50,000 with one surety in the like amount to the satisfaction of trial Court.”

Accordingly, instant bail application is hereby allowed. Applicant **Abdul Bari son of Agha Muhammad Noor** is directed to be released on bail subject to furnishing his fresh solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousands Only) and PR Bond in the like amount to the satisfaction of learned trial Court.

It need not to iterate that the observation(s) made hereinabove is/are tentative in nature and shall not prejudice the case of either party during trial. However, the learned trial Court may proceed against the Applicant, if he will be found misusing the concession of bail.

This Criminal Bail Application is disposed of in the terms indicated above.

JUDGE