

IN THE HIGH COURT OF SINDH, AT KARACHI

Cr. Bail Application No. 2139 of 2021

Applicants : Waqas s/o. Muhammad Essa and Adil s/o. Shafi Muhammad, through Mr. Muhammad Tariq, Advocate.

Respondent : The State, through Ms. Abida Parveen Channar, Special Prosecutor A.N.F.

Date of hearing : 01.02.2022

Date of order : 01.02.2022

ORDER

ZAFAR AHMED RAJPUT, J:- Through instant Criminal Bail Application, applicants/accused Waqas s/o. Muhammad Essa and Adil s/o. Shafi Muhammad seek post-arrest bail in Crime No. 22 of 2021, registered at P.S. A.N.F. Muhammad Ali Society, Korangi, Karachi under sections 6/9(b) of the Control of Narcotic Substances Act, 1997 (*the "Act"*). Their earlier application for the same relief filed in Special Case No. 70 of 2021 was dismissed by the learned Special Court No. 1 (Control of Narcotic Substances), Karachi, vide order dated 01.11.2021.

2. As per F.I.R., on 02.09.2021 at 1955 hours, on the spy information the applicants were arrested by a police party headed by SIP Rashid Ali of P.S. A.N.F. Muhammad Ali Society, Korangi, Karachi on being found in possession of 250 and 300 grams of heroin powder, respectively, near Noorani Mosque, Jabbar Para, Ibrahim Hyderi, Karachi, for which they were booked in the aforesaid F.I.R.

3. Learned counsel for the applicants contends that the applicants are innocent and have falsely been implicated in this case; that the applicants are confined in judicial custody since their day of arrest and police has submitted challan; hence, their custody is no more required by the police for further investigation; that the trial of the case is likely to take some time and the applicants cannot be kept behind bars for an indefinite period; that though the alleged offence is punishable up to seven years under the Act; however, the alleged involvement of the applicants and quantum of punishment, if any, shall be decided by the trial Court after full-fledged trial of the applicants keeping in view that whole case property has not been sent for chemical examination; that the investigation has not been conducted by any impartial officer, as the complainant has acted as I.O. of the case; that only ten grams heroin powder each out of the alleged recovered heroin powder has been sent to Chemical Examiner; hence, the applicants are entitled to the concession of bail.

4. On the other hand, learned Special Prosecutor A.N.F. opposes the grant of bail to applicants on the ground that the alleged offence was committed on 02.09.2021; as such, the F.I.R. should have been lodged under section 6/9(c) Control of Narcotic Substances (Sindh Amendment) Act, 2021, which carries capital punishment for the alleged offence and sufficient evidence is available with the prosecution to connect the applicants with the commission of alleged offence; hence, the instant bail application is liable to be dismissed.

5. Heard learned counsel for the parties and perused the material available on record with their assistance.

6. Perusal of the record shows that the applicants are confined in judicial custody since their day of arrest and police has submitted challan; hence, their physical custody is not required by the police for further investigation. F.I.R. has been registered under Section 9(b) of the Control of Narcotic Substances Act, 1997. Whether the offence falls within the ambit of said provision or under section 9(c) of the Control of Narcotic Substances (Sindh Amendment) Act, 2021, this issue shall be decided by the trial Court at the time of framing of charge. It appears that the complainant has also acted as the I.O. of the case, which fact bears a question mark over the impartial investigation of the case. Moreover, only ten/ten grams of heroin powder were sent to the Chemical Examiner; hence, it is yet to be determined whether the said samples were representative samples or not; hence, I am of the considered view that the applicants have made out a case of further enquiry. Accordingly, the instant application is allowed and in result thereof the applicants are admitted to post-arrest bail in aforesaid crime/offence subject to furnishing by them solvent surety in the sum of Rs. 50,000/- (Rupees Fifty Thousand only) each and P.R. Bond in the like amount to the satisfaction of the trial Court.

7. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicants on merits. However, in case the applicants misuse the concession of bail in any manner, the trial Court shall be at liberty to cancel the same after giving them notice, in accordance with law.

JUDGE

Athar Zai