

ORDER SHEET IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Application No.45 of 2021

Date	Order with signature of Judge
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For hearing of bail application.

Dated of hearing: 22.2.2021

Date of Order: 22.02.2021

Ms. Fourzia Qayyum, Advocate for applicant/accused.

Mr. Habib Ahmed, Special Prosecutor A.N.F.

Kausar Sultana Hussain, J:- Through instant Bail Application, applicant / accused Daro Khan son of Naseer Ahmed seeks his release on post arrest bail in Crime No. 19 of 2019, registered at Police Station ANF-Gulshan-e-Iqbal, Karachi under Section 6-9/C, 14 & 15 of CNS Act, 1997. The bail plea was raised by him before the learned trial Court but his request was turned down vide order dated 23.11.2020. The case has been challaned by the police and the same is now pending for trial before the Court of learned Special Court No.1 (Control of Narcotic Substances), Karachi (The state v. Daro Khan & others).

2. The brief facts of prosecution case are that on 03.08.2019, complainant SHO/ Inspector Abdul Rasheed Dahiri of PS ANF Gulshan-e-Iqbal, Karachi, was present at P.S ANF, Gulshan-e-Iqbal, Karachi when through high ups the spy informer came at Police Station and informed that Inter provincial smuggler of narcotics namely Abdul Baqi through his agents will smuggle the huge quantity of narcotic in three vehicles viz; Land Cruiser bearing registration Nos.RIY-1224, Double Cabin No. KS-6670 and Car Toyota Atlis No.DDG-327 from Quetta to Karachi, and if immediate action will be taken then the arrest and

recovery of Narcotic will be sure. Hence on receipt of such information and on the direction of his higher officers, he prepared a raiding party consisted upon him, ASI Siraj Khan, PC Muhammad Sohaib, PC Imam Bux, PC Ahmed and other ANF staff of Gulshan-e-Iqbal, Karachi alongwith spy, under supervision of A.D. Maqsood Ahmed Mahar duly armed with official weapons in government vehicle, vide roznamcha entry No.5, at 11:00 hours, left PS and at about 11.45 hours arrived near Toll Plaza, Hub River road and started surveillance of vehicle. At about 21-30 hours the said vehicles were seen to be coming and in Land Cruiser No. RIY-1224 of golden colour and vehicle No. KS-6670 double cabin of black colour 2/2 persons were seen to be seated, wherein vehicle No. BDS-327, Toyota Altis one person was seen to be seated, hence the said vehicles were stopped. He asked the people available there to act as witnesses but they refused due to fear of narcotics sellers therefore, looking to the said scenario PC Muhammad Sohaib and PC Imam Bux were nominated as mashirs and inquired name from a person who was sitting on driving seat of Land-Cruiser No.RIY-1224, who disclosed his name as **Daro Khan son of Naseer Ahmed** and second person, who was sitting adjacent to driver seat disclosed his name as Abdul Wadood son of Syed Haji Abdul Baqi. On inquiry about the narcotic both accused disclosed that narcotics is available in secret cavities of vehicle, therefore, the complainant cut the secret cavity of vehicle with instruments and recovered 100 packets of Chars, each packet weighing 1200 grams, accumulated weight of 100 packets became 120 kilograms. The recovered packets of Chars were allotted serial No.1 to 100 and the said packets were put into five sacks viz;

20/20 packets in each sack and weight of each sack became 24 Kilograms, same was sealed at the spot for the purpose of chemical examination. The personal search of accused Daro Khan was conducted and recovered original CNIC, one Nokia mobile phone alongwith sim, one copy of card of Military Intelligence stamp SEC SBU-304 and cash Rs.1500/- from his possession. Upon personal search of accused Abdul Wadood original CNIC, one Samsung 8-S mobile phone alongwith sim and cash Rs.500/- were recovered. The person sitting on driving seat of vehicle double cabin No.KS-6670 disclosed his name as Baz Khan son of Ahmed Khan and second person, who was sitting adjacent to driver seat disclosed his name as Feroz Khan son of Jamshed Ali Khan and on inquiry about narcotic both accused disclosed that narcotics is available in below the driving seat, front second seat and back seat of the vehicle, therefore, complainant recovered 2 packets from below the driving seat and 2 packets below the front second seat viz; total 4 packets of Chars wrapped with yellow colour solution tape from below back seat of vehicle. Thus, total packets of Chars became 20 packets and weight of each packet became 1000 grams on digital scale. The serial No.101 to 120 were mentioned on the packets and same was put into one sack and total weight became 20 kilograms and said packets were sealed at the spot for the purpose of chemical examination. The complainant also recovered SMG No.124105 from back seat of the vehicle, same was sealed separately. The personal search of accused Baz Khan was conducted and recovered one page of registration book of vehicle No.6670, one Nokia mobile phone alongwith sim, and cash Rs.1500/- from his possession. Upon personal search of accused Feroze Khan one

Samsung C-7 alongwith sim and one Nokia mobile alongwith sim. The person sitting on driving seat of vehicle No.BDG-327 disclosed his name to be Raz Muhammad son of Syed Rahmat and further disclosed that narcotics substances is lying in Diggy of the vehicle, therefore, complainant recovered 13 packets of narcotics substances out of which in 11 packets Chars was found whereas from two remaining packets Opium were lying. The weight of each packets became 1200 grams thus total weight of Chars became 13.2 kilograms. The serial No.121 to 131 were mentioned on Chars packets and the same were sealed in one sack for the purpose of Chemical Examination and when the weight of two packets of Opium 2 kilograms and packets of Opium were given serial No.132 to 133 and said packets of Opium packets were sealed in white cloth bag for the purpose of Chemical Examination. Upon personal search of accused Raz Muhammad one Nokia mobile phone alongwith sim, CNIC, and cash Rs.1000/- were recovered. The mashirnama of arrest and recovery of narcotics substances and arms ammunition was prepared at the spot, which was signed by above set of mashirs. The arrested accused and recovered property and vehicles were brought at PS, where the instant FIR was lodged.

3. On registration of the case, police took up the investigation and after completion of legal formalities submitted challan before the competent Court of law having jurisdiction.

4. Learned counsel for applicant / accused has argued that the applicant / accused is innocent and has been falsely implicated in this crime with malafide intention of complainant party. He further contended that co-accused Fazal Moula has already been granted bail

by the Hon'ble Supreme Court, vide order dated 09.05.2019 and another co-accused Abdul Wadood has also granted bail by this Court dated 12.10.2020, hence the applicant / accused is also entitled for the same relief on principle of consistency as the case of the applicant / accused for the purpose of grant of bail is on same footings of co-accused. He further argued that the applicant / accused is behind the bar since the date of his arrest (i.e 03.8.2019) but trial has not yet been concluded, the entire delay is on the part of prosecution. He further argued that the prosecution has violated the section 103 of the Cr.P.C as the prosecution case is silent regarding any effort made by the ANF officers to obtain attendance of private persons to witness the recovery proceedings, hence the matter requires further inquiry. He prayed for grant of bail.

5. Conversely, the learned Special Prosecutor ANF, has opposed the bail application on the ground that applicant / accused is narcotic seller and heavy quantity of Chars was recovered from his possession.

6. I have heard arguments of the learned counsel for the parties and also have perused the material available on record. On perusal of contents of the FIR it reveals that the applicant / accused was involved in the business of transportation of narcotics in heavy quantity from Quetta (Balochistan) to Sindh and Punjab and very actively he was doing this business for last several years. The applicant / accused has admitted his involvement in this crime during investigation.

7. Co-accused Fazal Moula has already been granted bail by the Hon'ble Supreme Court as he has not been nominated in the FIR, nor he was arrested from the spot. Bail was also granted to co-accused Abdul

Wadood son of Abdul Ghafoor owing to the reasons that he is a student of BS Hons. Media in the University of Central Punjab and if he remained in jail his future will be destroyed. Besides case of the applicant/accused is not on same footings of both co-accused as discussed above.

8. Section 25 of Control of Narcotic Substances Act, 1997 has excluded the applicability of section 103, Cr.P.C in narcotic cases. Besides, requirement to obtain search warrant can be dispensed with in cases where a quick action is required to be taken and due to paucity of time apprehension of narcotics being recovered or culprits having chance to escape are eminent. Admittedly, no medical report of the applicant/accused is available on the record, hence plea of applicant/accused regarding his illness is unsupported with the medical record. The applicant/accused was driving the vehicle, which was carrying recovered narcotic and on his pointation narcotic was recovered from secret cavities per prosecution case, hence I do not find any reason to allow this bail application of the applicant/accused, it is dismissed on merits.

9. Needless to mention here that the above observations are tentative in nature and trial Court shall not be influenced in any manner whatsoever.

10. These are the reasons of my short order dated 22.2.2021.

J U D G E