

IN THE HIGH COURT OF SINDH, AT KARACHI
Cr. Bail Application No. 2438 of 2021

Applicant : Muhammad Rafique s/o Abdul Aziz, through
Mr. Ali Raza Bhatti, advocate.

Respondent : The State, through Mr. Habib Ahmed, Special
Prosecutor A.N.F.

Date of hearing : 24.05.2022
Date of order : 24.05.2022

ORDER

ZAFAR AHMED RAJPUT, J:- Through instant Criminal Bail Application, applicant/accused Muhammad Rafique s/o. Abdul Aziz seeks post-arrest bail in Crime/F.I.R. No. 05/2016 registered at P.S. A.N.F. Clifton, Karachi under sections 6/9(c), 14 & 15 of Control of Narcotic Substances Act, 1997 (*the "Act"*). His earlier application for the same relief bearing No. 165/2021 filed in Special Case No. 99 of 2016 was dismissed by the learned trial Court i.e. Special Court-II (C.N.S.) Karachi, vide order dated 15.12.2021.

2. Brief facts of the prosecution case are that, on 13.02.2016, Inspector Aftab Ahmed of P.S A.N.F., Clifton, Karachi lodged the aforesaid F.I.R. alleging therein that upon receiving spy information that Mohammad Rafiq (*applicant*) and Abdul Karim had imported prohibited chemical in the name of M/s. SMA Associates, having its office at Jamshed Road No.3, Karachi from Hong Kong-China in a container bearing No.CRSU-1039220, a raiding party was constituted under the supervision of Deputy Director Nasir Aziz and reached Terminal Yard, Hawks Bay Road, Maripur Karachi, where Terminal Manager handed over them the documents of the said container. They opened the container by cutting the seal and found 701 cartons, each containing white color Jerry canes. Upon checking with the testing kit, 600 Jerry canes were found containing acetic-anhydride (*prohibited chemical*). The weight of each Jerry cane was 27 Kgs, and total weight of 600 Jerry canes came to 16200 Kgs. Out of them 10/10 ml chemical was withdrawn as sample for the purpose of chemical analysis and the Jerry canes were marked

with Serial No.1 to 600. The case properties were sealed under memo of recovery prepared at the spot and, thereafter, F.I.R. was lodged against the absconding accused persons. Subsequently, the applicant was arrested on 05.08.2021

3. Learned counsel for the applicant has contended that the applicant is innocent and has falsely been implicated in this case; that the applicant is working as self agent in market since many years; that the applicant has been nominated on the spy information which needs solid evidence; that the learned trial court dismissed the bail application of the applicant on the ground that he had imported subject consignment, which was in fact imported by M/s. SMA Associates while the applicant is the owner of M/s. Sana Trading International and he has no concern with subject consignment; that the applicant was continuously working in Karachi till his arrest and he was unaware about lodging of instant F.I.R.; that co-accused Bahadur Khan, Abdul Karim and Adal Muhammad have already been admitted to bail; that the prosecution story is highly doubtful as no description of shipment, importer, exporter and clearing agent is mentioned either in the seizure memo or F.I.R.; that from plain reading of seizure memo and F.I.R. it is clear that the applicant has no concern with the importer company and imported consignment; as such, no cogent evidence is available with the prosecution to connect him with the alleged offence; that the case of applicant is fit for further inquiry; that the applicant is confined in judicial custody since day of his arrest and A.N.F. has already submitted the challan; hence, his custody is no more required for further investigation; as such, he is entitled to the concession of bail.

4. Conversely, learned Special Prosecutor A.N.F. has opposed this application on the grounds that the applicant smuggled acetic-anhydride in huge quantity, which is a controlled substance, by concealing the same in a container; that the applicant is consignee/ importer of the container; that the importer company's address is the house of the applicant; that prosecution has sufficient evidence against him to connect with the commission of alleged offence; that the applicant

has remained absconder for about five years; hence, he is not entitled to the concession of bail.

5. Heard, record perused.

6. It appears that initially F.I.R. was lodged against the applicant and one Abdul Karim, as importer of the alleged consignment. After investigation, A.N.F. submitted the challan against the applicant, Saeed Khan, Afzal Khan, by showing them as absconders, Bahadur Khan, Adal Muhammad and Abdul Kareem. Out of them, co-accused Bahadur Khan was granted post-arrest bail by the trial Court, vide order dated 23.04.2016; co-accused Abdul Karim (*nominated in F.I.R. with applicant*) was granted pre-arrest bail by the trial Court, vide order dated 04.03.2017, and co-accused Adal Muhammad was granted post-arrest bail by this Court in Cr. Bail Application No. 564 of 2016, vide order dated 28.06.2016. As per supplementary challan, the applicant is a 'clearing Agent', while co-accused Saeed Khan is the owner of the subject container/prohibited chemical.

7. Acetic-anhydride is a key raw material in pharmaceuticals, detergents, organic and inorganic products. It is yet to be determined at trial as to whether the alleged chemical falls within the definition of controlled substance for production or manufacturing of narcotic drugs or psychotropic substance as defined under section (2) (k) of the Act to attract the penal provisions of the Act or it is case of violation of existing Export Policy, Import and Export Control Act, 1950 or Customs Act, 1969. Hence, the guilt of the applicant requires further inquiry. Accordingly, the instant application is allowed by granting post-arrest bail to applicant in aforesaid crime/offence subject to furnishing by him solvent surety in the sum of Rs. 10,00,000/- (*Rupees Ten Lac only*) and P.R. Bond in the like amount to the satisfaction of the trial Court.

Above are the reasons of my short order dated 24.05.2022.

JUDGE