

**IN THE HIGH COURT OF SINDH, AT KARACHI**  
**Cr. Bail Application No. 1998 of 2021**

Applicant : Syed Muhammad Abbas s/o Shams-ul-Hasan,  
through Mr. Khawaja Naveed Ahmed, advocate

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

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Date of hearing : 07.04.2022  
Date of order : 07.04.2022

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**ORDER**

**ZAFAR AHMED RAJPUT, J:-** Through instant Criminal Bail Application, applicant/accused Syed Muhammad Abbas s/o Shams-ul-Hassan seeks post-arrest bail in Crime No. 15/2020, registered at P.S. A.N.F.-II, Karachi under section 6/9(c) of Control of Narcotic Substances Act, 1997. His earlier application for the same relief in Special Case No. 20/2020 was dismissed by the learned Special Judge-I (C.N.S.), Karachi, vide order dated 29.08.2021 .

2. It is alleged that, on 26.04.2020, complainant S.I. Muhammad Asad Abbas of P.S ANF-Muhammad Ali Society, Karachi reached DHL Head Office JIAP, Karachi where he checked the suspicious parcel and recovered heroin weighing 3.100Kgs., concealed in the ladies purses. He prepared separated sample for chemical examination and sealed the remaining heroin along with relevant booking documents under a mashirnama. On scrutiny of the documents as well as suspicious parcel, the name of the sender was found written as Zain Yar Khan whereas name of receiver alleged parcel was written as Saif Khan r/o 84 White OWL N3P IAZ, Bront Ford Ontario Canada, for which instant FI.R. was lodged.

3. Learned counsel for the applicant contends that the applicant is innocent and has falsely been implicated in this case by the A.N.F. with mala fide intention and ulterior motives; that no incriminating material was recovered from applicant; that all the documents are in the name of co-accused Zain Yar Khan, who has already been granted bail by the learned trial Court vide order dated 09.07.2021, while the case of the applicant is on better footing; that the applicant has been arrested in the alleged offence

on the basis of statement of co-accused made by him in custody of A.N.F., which is inadmissible under Article 38 of the Qanun-e-Shahadat Order, 1984 (“**Order, 1984**”); that the complainant is also the I.O., who has completed all formalities himself; that the place of alleged incident is located in a thickly populated area but no private person has been associated by the prosecution to witness the recovery of alleged heroin; that neither any person from Courier Company has implicated the applicant nor CCTV footage has been collected by the prosecution to show presence of the applicant with co-arsed in the courier company for booking of the alleged parcel, which facts create doubt in a prudent mind about the guilt of the applicant and benefit thereof always goes in favour of the applicant even at bail stage; that the applicant is confined in judicial custody since the day of his arrest i.e. 28.04.2020 and the investigation has been completed; hence, his custody is no more required for further investigation; that the trial of the case is likely to take some time and the applicant cannot be kept behind bars for an indefinite period; hence, the applicant is entitled for the concession of bail. In support of his contentions, learned counsel has relied upon the case of *Raja Muhammad Younas v. The State* (2013 SCMR 669).

4. On the other hand, learned Special Prosecutor A.N.F. opposes the grant of bail to applicant on the grounds that 3.100 Kilograms heroin powder was recovered from the parcel booked through DHL for Canada by the applicant through co-accused Zain Yar Khan, whereafter applicant was arrested and from his possession 1500 grams heroin powder was also recovered for which F.I.R. No.16/2020 was registered against him; that huge quantity of heroin was being smuggled by the applicant to a foreign country by concealing the same in ladies purses; that the applicant has not alleged any enmity with the A.N.F. officials for implicating him falsely in this case; that sufficient evidence is available with the prosecution to connect him with the commission of alleged offence.

5. Heard, record perused.

6. It appears from the perusal of the record that, on 26.04.2020, complainant/S.I. received telephone call from DHL Head Office situated at JIAP, Karachi regarding booking of suspicious parcel/card board through District office Royal Delivery Express situated near Ayesha Manzil, for sending the same to Canada, therefore complainant/SI alongwith his subordinate staff arrived at DHL Head Office and met with Parcel Inspector Saud Ahmed, who handed over him the suspicious parcel alongwith shipment documents. On scrutiny of the documents as well as parcel, the name of sender was found written as Zain Yar Khan whereas name of receiver was written as Saif Khan r/o 84 White OWL N3P IAZ, Bront Ford Ontario Canada, Cell No.14162308771. Complainant/S.I in presence of the mashirs checked the suspicious parcel and recovered eleven ladies purses, two towels, six ladies cloths, two baby frock/cloth of different colour. He tore the ladies purses and recovered heroin powder weighing 3.100 Kgs lying in yellow colour polythene bags and concealed tactfully inside the ladies purses. After observing required formalities at the spot, A.N.F Police party brought the secured property at P.S where FIR was lodged. It further appears that the complainant/SI conducted the investigation of case. On 27.04.2020, he recorded 161, Cr.P.C. statements of PWs, namely, Inspector Saud Ahmed of DHL, booking clerk Muhammad Adnan of Sub-Office, Royal Delivery Express and PW Muhammad Muhsab Zaheer, owner of franchise M&P. On 28-42021, he arrested co-accused Zain Yar from his house, who during investigation disclosed that the owner/SOS of the subject parcel was Syed Muhammad Abbas, the applicant, who was arrested on 28.04.2020 and from his possession 1500 grams of heroin powder was recovered which was concealed in the same like ladies purses which were got recovered in instant case, for that a separate F.I.R. being Crime No. crime No.16/2020 was registered against him. It reveals from the record that the absconding accsued Saif Khan, the receiver of the alleged parcel in Canada, is the maternal uncle of present applicant and the present applicant handed over the parcel to co-accused Zain Yar Khan for its dispatching to Canada through DHL on the pretext that he was not having his original C.N.I.C.

8. There is no cavil to the proposition that under Article 38 of the Order, 1984 admission of an accused before a police officer cannot be used as evidence against the co-accused; however, in the instant case the relationship of co-accused Saif Khan with the present applicant is undeniable fact. It is also a fact that the alleged parcel was booked for co-accused Saif Khan. Besides, on being arrested; the present applicant was found in possession of same like ladies purses wherein 1500 grams heroin was concealed in similar manner. Hence, the applicant has not been implicated in this case merely on the statement of co-accused.

9. The offence allegedly committed by the applicant i.e. delivering the principal offender for transportation 3100 grams of heroin from Pakistan to Canada though DHL brings the case of the applicant within the scope of prohibition, contemplated by Section 51 of the Act. Applicant's claim with regard to his false implication is an issue that cannot be attended without going beyond the scope of tentative assessment, an attempt prohibited by law. Prima facie, sufficient material is available with the prosecution to connect the applicant with the commission of alleged offence. Trafficking/smuggling of heroin in huge quantity can have devastating effects on the society generally and it is a threat to honour of the country in international community particularly. No case for granting bail to applicant on the ground of alleged further inquiry has been made out. The case-law cited by the learned counsel for the applicant being on different footings does not advance the case of the applicant for grant of bail; hence, instant bail application is dismissed, accordingly.

8. The observations made hereinabove are tentative in nature and the same shall not influence the trial Court while deciding the case of applicant on merit.

JUDGE

*Athar Zai*