

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Bail Application No. 414 of 2023

DATE

ORDER WITH SIGNATURE OF JUDGES

For hearing of bail application.

12-05-2023

Mr. Javed Ahmed Shar, Advocate a/w applicant.

Mr. Dilbar Ijaz Advocate, Special Prosecutor Customs a/w Tanveer Ashraf, I.O.

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Omar Sial, J: Abdul Kareem has sought pre-arrest bail in crime number ASO-46/2022-HQ registered under sections 6, 7, 8 and 9(c) of the CNS Act, 1997 at the ASO police station. Earlier, his application seeking bail was dismissed on 21.02.2023 by the learned Special Court-II (CNS), Karachi.

2. Acting on spy information, a joint team of the Pakistan Custom and the Pakistan Maritime Security Agency, on 11.02.2022, stopped an unregistered and unnamed wooden boat within the territorial limits of Pakistan. A search of the boat resulted in the discovery of 625 kgs of amphetamine, a psychotropic substance prohibited under the CNS Act, 1997. Seven persons on the boat were arrested. These seven people did not include the applicant, however the applicant was arrested 20 days later when one of the arrested persons by the name of Mushtaq Ahmed told the investigating officer that the boat they were sailing in was owned by the applicant.

3. I have heard the learned counsel for the applicant as well as the learned Special Prosecutor, Pakistan Customs, who was assisted by the investigating officer of the case. My observations and findings are as follows.

4. An attempt to smuggle a sizeable quantity of a prohibited substance has been made, yet the investigation conducted, at least as far as the applicant is concerned is appalling, to say the least. It transpires during the hearing of this application that the sole reason to seek the arrest of the

applicant was that Abdul Kareem had said that he was the owner of the boat. The investigating office admitted that not a shred of evidence had been found to connect the applicant with the ownership of the boat. When he was asked as to the basis for his nominating the accused in this crime, he replied that he had phoned the applicant but the applicant's phone was switched off. Hence, the investigating officer thought that he had sufficient evidence against the applicant. Keeping in view the sizeable quantity of narcotics recovered from the boat, Pakistan Customs was still given concession, however, the topping on the cake was when the investigating officer admitted that let alone Mushtaq Ahmed recording a section 164 Cr.P.C. statement before a magistrate, the investigating officer had not even recorded a police statement where Mushtaq Ahmed would confirm in writing that indeed it was he who had told the investigating officer that the boat was owned by the applicant. In essence the reason for implicating the applicant in this crime is that he had switched off his phone when the investigating officer called him. This conduct of the prosecution appears to be an abuse of the powers given to the investigating agencies by law. The case against the applicant is one of further inquiry.

5. The applicant's counsel has explained extensively that the applicant's family that is from the FATA region has many family infightings ongoing. As a consequence, a number of times the Pakistan Rangers have picked up the applicant's brother for different reasons. In fact, counsel has argued, that the reason the applicant's phone was switched off was because the Rangers had been harassing, intimidating and threatening him that he should reveal the whereabouts of his brother. The learned Special Prosecutor has not rebutted this claim. Keeping the foregoing in mind as well as looking at the evidence against the applicant, malafide certainly cannot be conclusively ruled out at this preliminary stage.

6. Above are the reasons for the short order of 08.05.2023.

JUDGE