

IN THE HIGH COURT OF SINDH KARACHI**CRL. BAIL APPLICATION NO. 2156 OF 2023**

Applicant : Mst. Sadaqat @ Sana
Wife of Fazal Ahad,
through Mr. Aamir Haroon Meo,
Advocate

Respondent : The State
through Mr. Muhammad Farooq
Ali Jatoi, Special Prosecutor ANF

Date of hearing : 11th December 2023

ORDER

Omar Sial, J.: Ms. Sadaqat alias Sana has sought post-arrest bail in crime number 20 of 2023 registered under sections 6, 9(1)(3)(c), 14 and 15 of the Control of Narcotic Substances, Act, 1997. Her earlier bail plea was dismissed on 06.09.2023 by the learned Special Court-II (C.N.S.) Karachi.

2. ANF had intelligence reports regarding the drug-related activities of the applicant, and according to one such report, an ANF team started to search vehicles passing through a certain point. During such checking, a motorcycle without a registration number was seen with a man and a woman. The woman was identified as Sadaqat by the spy informer. The man who was driving the motorcycle was identified as Fazal Subhan. When questioned, Fazal Subhan disclosed that there was charas in the bag lying between his legs on the motorcycle. Sadaqat disclosed the presence of charas in the handbag she carried. 3 kgs of charas were recovered from the bag in Fazal's possession, whereas 1 kg was recovered from Sadaqat's handbag. Both were arrested, and the case was registered.

3. Learned counsel for the applicant has very noticeably not argued that the case was a false one but has relied on the judgment titled **Tahira Batool vs The State (PLD 2022 SC 764)** to say that Sadaqat, being a woman, is entitled to bail. As a corollary argument, he has laid the entire blame on Fazal Subhan and thus denied conscious knowledge of the possession. The learned special prosecutor has argued that the applicant, although she does not have a crime record, is no stranger to the world of the narcotics trade. The ANF has discovered payments made by her through her bank account to persons who are suppliers of charas and also found that the applicant's family members have past involvement with narcotic-related cases.

4. I have heard the learned counsel for the applicant and the learned Special Prosecutor, ANF. My observations and findings are as follows.

5. The Tahira Batool (supra) case was one of a woman whose post-arrest bail had been denied by the Islamabad High Court for committing offences under sections 395 and 412 P.P.C. The Supreme Court observed that the High Court should have examined her case in light of section 497 (1) Cr.P.C. if it had found her not entitled to bail under section 497(2) Cr.P.C. The Court elaborated on the rule that bail was a rule in cases where the punishment fell within the non-prohibitory clause, and refusal was an exception. The Court reiterated principles enunciated by the Supreme Court as early as 1995 in Tariq Bashir and 5 others vs The State (PLD 995 SC 34). The Court also elaborated that in cases of women, etc., as mentioned in the first proviso to section 497(1) Cr.P.C., irrespective of the offence category, bail is to be granted as a rule and refused as an exception. In paragraph 6 of the judgment, the Court highlighted certain circumstances that could be grounds to depart from the rule. The Court did not find any exceptions applicable in the case before it and thus admitted the woman to bail.

6. Every court below the Supreme Court is bound to follow the decisions of the Supreme Court. There can be no exception to the principle. Therefore, it is pertinent to record that I'm afraid I have to disagree with the learned counsel for the applicant that the Tahir Batool case supports the proposition that a woman must necessarily be granted bail in all situations. The Supreme Court itself, in a subsequent case, **Mst Fursan vs The State (2022 SCMR 1950)**, denied a woman bail in a narcotic-related case as the case fell within one of the exceptions highlighted in the Tahira Batool case. The Court also observed that "The reliance of the learned counsel for the petitioner on the Tahira Batool case is misconceived, as in the said case, the Court also observed that "the persons involved in the commission of offences of robbery or dacoity are usually the professional criminals and there is a likelihood that they would repeat the offence if enlarged on bail." The learned counsel for the applicant stopped short of citing the *Fursan case*, as perhaps that did not support the argument he had built up.

7. Of all the illicit products trafficked by organized crime, drug trafficking is the most (in) famous, and it has received systematic attention over the last decades. Initially, all research portrayed the drug trade as men's work; however, in the 1990s, researchers studied an apparent increase in women in drug selling. Whereas previous research emphasized women's powerlessness and vulnerability, an emergent discourse emphasized opportunity and emancipation. The United Nations Office on Drugs and Crime reported that women represent around 20% of those involved in drug seizures worldwide (UNCND 2011). Women's motivations for drug selling are more nuanced. Although fulfilling the caregiving duties embedded in traditional notions of femininity may serve as motivation, women's drug selling is also a response to autonomous decisions rooted in a desire for status, power, and a means to support one's drug use. Researchers increasingly appreciate that selling drugs may also be a purposeful choice for women, albeit in

constrained circumstances. (*Jennifer Fleetwood & Lindsay Leban (2023) Women's Involvement in the Drug Trade: Revisiting the Emancipation Thesis in Global Perspective, Deviant Behavior, 44:2, 238-258. DOI:10.1080/01639625.2022.2033607*)

8. It is also a fact that drug traffickers are increasingly using women and children to transport narcotics as women are generally not checked due to the concept of "*chaddar and char dewaree*" and the overall respect given to women in our societies. The increase in their involvement in the drug trade is reflected by a substantial increase in women in Sindh's jail population who are accused of drug-related crimes. If any leniency is shown to a woman, especially in a case where she is apprehended red-handed in possession of narcotics, it will only encourage drug barons to exploit their vulnerability and poverty even more. A clear message has to be sent to the kingpins in the drug trade that they will derive no benefit by using women and children to accomplish their notorious designs.

9. It would not at all be out of place to mention that the Supreme Court of Pakistan in **Surraya Bibi vs The State (2008 SCMR 825)** observed that:

"We may point out here that in the cases pertaining to the offence of narcotics, it has been seen that the drug peddlers, to achieve their nefarious objects, have adopted obnoxious device by engaging womenfolk and the children and through them, crimes is being committed, and ultimately mercy is sought against such accused on humanitarian grounds, etc. Therefore, to curb such menace, Courts are required to award adequate punishment instead of showing sympathy on the ground that accused is woman or a child, otherwise, the actual accused involved in such heinous crime, which is against the society, would be encouraged and carriers would also be freely available to promote the crime with the hope that after spending small period in the prison, they would be set at liberty despite of committing heinous crime of drug trafficking."

10. In the present case, evidence is obtained which, upon a tentative assessment, suggests unexplained payments being made to persons (termed as persons who are the source of supply) as well as past convictions and involvement of close relatives of the applicant in drug-related cases. On balance, there is a strong likelihood of the offence being repeated or the applicant absconding before the final adjudication in the case by the learned trial court. The case against the applicant falls within the exceptions as envisaged in the *Tahira Batool* case. No malafide or ill-will of the ANF has been pointed out or argued by the learned counsel that could have led to a false charge.

11. The bail application is dismissed.

JUDGE