

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No.1913 of 2023

Date	Order with signature of Judge
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For hearing of bail application

14.9.2023

Mr. Shaukat Hayat advocate for the applicant
Ms. Abida Parveen Channar, Special Prosecutor ANF alongwith
IO/Inspector Wajid Hussain, PS ANF Clifton Karachi

Through this bail application under Section 497/498 Cr.P.C., the applicant Adnan alias Sameer has sought admission to post-arrest bail in F.I.R No. 26/2022, registered under Section 6/9(C) CNSA at P.S ANF Clifton Karachi.

2. The charge against the applicant is that on 04.08.2022 Complainant Inspector Wajid Hussain of PS ANF Clifton, Karachi arrested him along with a Hyundai Car and recovered Charas weighing 02 Kgs, 300 grams, Heroin, 300 grams, 300 grams of amphetamine (Ice) and 04 grams of cocaine from his possession. After observing the required formalities at the spot the applicant was brought to P.S ANF Clifton Karachi where FIR was lodged under Section 6/9 (C) of CNSA. The prosecution obtained the chemical report of the alleged recovered Narcotics on 1.9.2022, with a positive result. The earlier bail plea of the applicant has been declined by the Special Court-II CNS vide order dated 10.08.2023 in Special Case No. 79/2022.

3. Mr. Shaukat Hayat learned counsel for the applicant/accused argued that the applicant/accused is innocent and has falsely been implicated in this case. Learned counsel emphasized that according to the prosecution record the applicant was present in the car, from the dashboard, alleged narcotics i.e. Charas weighing 02 Kg, 300 grams, Heroin, 300 grams of amphetamine (Ice), and 04 grams of cocaine were recovered. Per learned counsel investigating officer has brought on that an applicant is a crippled person as he has suffered from various ailments and his leg was not normal rather he was disabled, and then the question arises as to how ANF officials found him driving the Hyundai Car and alleged Narcotics and foreign currencies were recovered from the dashboard of the car and trunk, which factum needs further probe to the guilt of the applicant. Learned counsel emphasized that the complainant has made no efforts to associate any private witness with the public, though the complainant received spy information of the alleged incident, which is in

clear violation of Section 103 Cr.P.C. He argued that both the mashirs are subordinate to the complainant; therefore, the false implication of the applicant/accused cannot be ruled out. Learned counsel asserted on the ground that at present there is no clear evidence/material to reasonably establish to connect the applicant with the alleged crime and it has not come on record that the applicant is the owner of the car and had knowledge of the presence of the alleged narcotics therein, which has conveniently been attributed to the applicant. Learned counsel suggested that the prosecution lead the remaining evidence at the trial about the constructive knowledge and presence of the narcotics in the car but on the available record this is not a case where bail can be justifiably refused to the applicant till his guilt is proved beyond shadow of doubt, more particular when the applicant is a disabled person and somewhat concession can be extended to him on this ground as well. Learned counsel further argued that as per amendment in CNS Act,1997, the punishment for 2 Kg Chars may extend to 14 years not less than 09 years, and for Heroin from 100 grams to 499 grams the punishment is up to 10 years and not less than five years, for from 100 grams to 500 grams punishment up to five years and not less than ten years and for cocaine upto 99 grams the punishment up to seven years and not than 18 months thus the case of the applicant does not fall within the prohibition contained in section 497(1) CR.PC'; that there is inordinate delay in the conclusion of the trial of the applicant without his fault and the applicant/accused has been incarcerated inside jail his arrest i.e. 04.08.2022; that the offenses do not fall within the prohibitory clause in terms of amendment in law. He added that the applicant was picked up by Pak Rangers from his house, two days before lodging of FIR and handed over his custody to ANF who booked him in the present case with malafide intention and foisted the narcotics upon him. Learned counsel submitted that for bail quantum of contraband and expected quantum of punishment to be awarded by the trial court has to be taken into consideration while deciding the bail of the accused; and, as per the chemical report, the small quantum of narcotics was dispatched for chemical analysis, thus the applicant cannot be saddled for the entire Narcotics in terms of law laid down by the Supreme Court in its various pronouncements. He added that the applicant has been in jail for about one year, yet the conclusion of the trial is not in sight, which would also tilt the scales of justice in favor of the accused for bail rather than incarceration in jail. Learned counsel referred to the evidence of PW PC Naveed Abbas and submitted that various discrepancies create serious doubt in the prosecution story as such the applicant is entitled to bail in term of Section 497(2) Cr. P.C. In support of his contentions, he relied upon the cases of *Jamal ud Din*

vs. The State **2012 SCMR 573**, *Shakeel Shah vs. The State* **2022 SCMR 1**, *Imtiaz Ahmed vs. The State* **2017 SCMR 1194**, *Zaigham Ashraf vs. The State* **2016 SCMR 18**, *Nasir Mehmood vs The State* **2021 P Cr. L. J 443**, *Fahad Hussain vs The State* **2023 SCMR 364** and unreported order dated 14.06.2023 passed in Cr. Bail Application No. 791/2023. He prayed for allowing the bail application.

4. On the other hand learned SPP for ANF argued that applicant/accused Adnan @ Sameer was arrested on the spot and from his possession Charas weighing 02 Kgs, 300 grams of Heroin, 300 grams of amphetamine (Ice), and 04 grams of cocaine were recovered and the number of illegal foreign currency was secured. She further submitted that the PW PC Naveed Abbas has been examined by the trial Court but no enmity could be established by the defense counsel with the ANF officials to implicate him in the huge quantity of the Narcotics case; and that the provisions of Anti Money Laundering Act 2010, are also applicable in the present case because of the recovery of foreign currency. The learned special prosecutor has supported the impugned bail declining order passed by the learned trial court and maintained that the applicant is involved in a “heinous offense” as discussed supra. She added that the embargo contained in Section 51 of the Control of Narcotics ‘Substance Act 1997 does apply to the case of the present applicant, which is not in derogation of Section 103 Cr. P.C. The learned Special Prosecutor has submitted that the Chemical Examiner report is positive and supports the case of prosecution; and, because of the recent amendment in the law, through Act No.XX of 2022 in the Control of Narcotics Substance Act 1997, a punishment of 14 years is mentioned, which falls within the prohibitory clause of Section 497 Cr. PC. Learned SPP further submitted that after completion of the investigation the charge has been framed and trial is in progress even one PW P.C Naveed Abbas has been examined and the remaining witnesses are yet to be examined within reasonable time. Per learned SPP, when the trial is likely to conclude within the shortest possible time, the bail application of the applicant should not be decided on merits and the matter may be left to the trial Court because it may prejudice the case of either party. She prayed for the dismissal of the bail application.

5. I have heard learned counsel for the applicant and learned Special Prosecutor ANF and have carefully examined the material available on record and case law cited at the bar, including the recovery of narcotics as well as foreign currency; and, test report dated 01.09.2022 submitted by the Chemical Examiner after examining the narcotics allegedly recovered

from the possession of the applicant, according to the said test reports, the narcotic substances, which were recovered from the applicant, weighing 02 Kgs Charas, 300 grams Heroin, 300 grams of Methamphetamine (Ice) and 04 grams of cocaine;. Keeping in view all the material available on record as well as partial evidence recorded by the trial Court, this is not a fit case wherein post-arrest bail could be allowed at this stage as the trial has already commenced, therefore, the applicant at this stage is not entitled to the concession of post-arrest bail.

6. Adverting to the grounds raised by the learned counsel for the applicant as discussed supra, suffice it to say that the stance taken by the applicant cannot be appreciated in depth at this stage, more particularly in terms of the law laid down by the Supreme Court in the cases of Muhammad Noman Munir V/S The State and another, **2020 SCMR 1257**, and Bilal Khan V/S The State, **2021 SCMR 460**. In the former case, 1,380 grams of cannabis and 07 grams of heroin were recovered from the accused, and in the latter case, the quantity of the recovered ice was 1,200 grams. In both the said authorities, the concession of bail was declined by the Supreme Court by holding that the prohibition embodied in Section 51 of the Act of 1997 was applicable thereto. It was also held in Muhammad Noman Munir (supra) that the non-association of a witness from the public and his non-cooperation was usual conduct symptomatic of social apathy towards civic responsibility; and, even otherwise the members of the contingent being functionaries of the State are second to none in their status, and their acts statutorily presumed, prima facie were intra vires. Further the Supreme Court in a recent case has held that the menace of drugs has taken alarming dimensions in this country partly because of the ineffective and lackadaisical enforcement of the laws and procedures and cavalier manner in which the agencies and at times Courts of the country address a problem of such serious dimensions. Studies based on conferences and seminars have very often shown that the menace is deep-rooted. This menace is a great threat to a peaceful society and is affecting many lives, especially youngsters; therefore, immediate steps are required to be taken to curb these nefarious activities.

7. As per learned counsel for the applicant the evidence of PW1 Muhammad Hussain Kalhor, Malkana Incharge (Ex. 05) and PW2 PC Naveed Abbas Mashir of seizure memo (Ex. 07-A) has been recorded by the trial Court, and the statement of both the witnesses are materially condicatory and doubtful of alleged seizure and arrest of the applicant, however, the remaining witnesses are yet to be examined. Be that as it may, the discrepancies in the statement of the PWs are concerned, suffice it to say that at the bail stage, such discrepancies/ contradictions

cannot be looked into and on that basis applicant /accused cannot claim the benefit of section 497 (2) Cr.P.C. for the reason that the remaining witnesses are yet to be examined and the learned trial Court has to evaluate the entire evidence but not in toto, therefore at this stage, nothing could be said for and against, for the reasons discussed supra. It is also well settled now that when the trial is in progress this Court ordinarily does not interfere with the order of the trial Court relating to the grant and refusal of the bail just to avoid discussion and remarks on the merits of the case. On the aforesaid proposition, I seek guidance from the decisions of the Supreme Court in the cases of Ehsan Akbar v. The State and 2 others (2007 SCMR 482), Muhammad Sadik & others vs The State 1980 SCMR 203, Muhammad Ismail vs Muhammad Rafiq PLD 1989 SC 585, Mian Dad vs The State 1992 SCMR 1418, and Gohar Rehman vs Muhammad Tahir 2011 SCMR 815.

8. In view of what has been discussed above, and keeping in view the principles set forth by the Supreme Court in the aforesaid judgments, this Court does not find any reason to interfere in the progression of the trial, however, at this stage judicial propriety demands that directions may be issued to the trial Court to conclude the trial of the case within two months by examining the remaining witnesses after receipt of this order.

9. As far as the ground of delay in the trial is concerned it is a statutory right of the accused and can be agitated after the completion of the statutory period, subject to exceptions provided therein and direction given supra. And if the trial Court fails to conclude the trial within the stipulated period, the applicant will be well within his right to seek bail on statutory grounds after the aforesaid period which shall be decided under the law; and in the intervening period, if the applicant or on his behalf seeks adjournment in the trial, the same period shall be excluded. However, it is made clear that nothing stated or observed while deciding the instant bail application shall be tantamount to the expression on the merits of the case which will remain open if the direction is not followed by the trial Court in time. Resultantly the instant bail application is dismissed

JUDGE