

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No. 970 of 2024

Date	Order with signature of Judge
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For hearing of bail application

For hearing and Order: 04.07.2024

Mr. Mallag Assa Dashti advocate for the applicant.
Ms. Abid Parveen Cahnar, Special Prosecutor ANF.

ORDER

Adnan-ul-Karim Memon, J:- Through this bail application under Section 497 Cr.P.C., the applicant Muhammad Ishaque has sought admission to post-arrest bail in F.I.R No.39/2023, registered under Section 6/9(2), Sr. 6C, 14 & 15 of CNS amended Act 2022 at Police Station ANF-I, Karachi. The earlier bail plea of the applicant has been declined by the learned Special Court CNS-1 Karachi vide order dated 27.04.2024 in Special Case No. 80/2023 with the following observation:-

“I have also gone through the case laws lies upon by the learned defence counsel, but with utmost respect and regard the facts and circumstances of said case laws are quite distinguishable from the case in hand.

Hence for the going reason, in view of the humble view that the instant bail application merits no consideration consequently the same is hereby dismissed. Order accordingly.”

2. The accusation against the applicant Muhammad Ishaque is that on 17.06.2023 ANF received the suspicious parcel containing Ice (Methamphetamine) weighing 1050 grams and on the statement of co-accused, the name of the applicant was inserted in the crime report. The prosecution obtained a chemical report from the chemical examiner on 20.06.2023, which is positive.
3. It is inter-alia contended that the applicant is innocent and has falsely been implicated in this case, he next contended that the earlier bail plea of the co-accused Hayat Khan was presented before this Court in Bail Application No. 148 of 2024 which was dismissed as not pressed on the plea that trial Court had already granted bail to him, however after approaching the trial Court on fresh ground by the applicant but the same was declined on the premise that the first bail application of the applicant was dismissed on 15.02.2024 on merit. Learned counsel submitted that the applicant applied for bail on the rule of consistency as the bail had already been granted to co-accused Syed ul Bashar, however, the same arguments

could not impress the presiding Officer, though he was well aware the facts that the applicant has not been nominated as direct accused in the FIR, however only a parcel containing Ice was recovered and thereafter they booked the other accused who named the applicant in this case, which statement under the law is inadmissible in evidence. He has further contended that the applicant is neither the owner of contraband (Ice) nor the owner of DHL Services where alleged recovery has been made; that the applicant has neither transported nor possessed the purported Narcotics as such Section 6/9(2) of CNS Act is not attractive as the statement of co-accused is inadmissible under the law. He prayed for allowing the bail application.

4. The Learned Special Prosecutor has opposed the application on the premise that the applicant is involved in the narcotic case as such he is not entitled to the concession of post-arrest bail. She further submitted that without the consent and knowledge of the applicant, the narcotics could not be sent to a Foreign country through DHL Courier Service; that the rule of consistency cannot be applied to this case as the role of the applicant accused is different from that of accused Syed-ul-Bashar; that the applicant is the main source of supply of narcotics through the supplier. She prayed for the dismissal of the bail application.

5. I have heard learned counsel for the parties and perused the material available on record.

6. No doubt, the offense of trafficking the narcotic is a heinous one and affects society at large but it is a settled principle of law that every case is to be decided on its facts and circumstances, the Supreme Court in the case of Deputy Director ANF Karachi vs Syed Abdul Qayum, reported in **2001 SCMR 14**, ruled that despite the provisions contained in Section 51 of the Control of Narcotic Substances Act, 1997, the Sessions Court and High Court have the power to grant bail. For the sake of convenience and ready reference, the relevant part of the judgment is given below:-

“Moreover, this Court in the case of Gul Zaman V the State reported in 1999 SCMR 1271, has elaborately dealt with the application of sections 496, 497, and 498 Cr.P.C. in view of the bar contained in section 51 of the Act and it has been unanimously held that despite the provisions contained in section 51 of the Act, the Sessions Court and High Court have the power to grant bail.”

7. Judged by the above touchstone, if one goes through the record of the case, one could conclude that the applicant was arrested on the statement of co-accused. The Supreme Court in the case of Syed Abdul

Qayoom, as discussed supra while dilating upon the evidentiary value of the statement of the co-accused made before the police in the light of mandates of Article 38 of the Qanoon-e-Shahdat Order 1984, inter alia held that statement of co-accused, are inadmissible in evidence and cannot be relied upon, which was the position in the case of Raja Muhammad Yunus v The State **2013 SCMR 669**. It is well settled that in cases where the names of the culprits are not mentioned, holding of test identification parade becomes mandatory. Reliance is placed in the case of Farman Ali v The State **1997 SCMR 971**.

8. In view of the peculiar facts and circumstances of the case, keeping in view the statement of the co-accused, the rule of consistency, and the issue of possession and transportation of narcotics, all factums need further inquiry, as the applicant has not been found in possession/transportation of the alleged narcotics, and as such the applicant Muhammad Ishaque entitled to bail in the aforesaid crime subject to his furnishing solvent surety in the sum of Rs. 200,000/- (Rupees two lacs) and P.R bond in the like amount to the satisfaction of the trial Court.

9. Before parting, it is reiterated that the observations made hereinabove are tentative. The trial court is at liberty to independently adjudicate the case on its own merits, without being influenced by the observations made hereinabove with further direction to the trial court to conclude the trial within two months positively without fail in case of failure on the part of the trial court the matter shall be referred to MIT-II of this Court for placing the matter before the competent authority for appropriate orders on administrative side.

JUDGE