

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Cr. Bail Application No.2662 of 2023

DATE: **ORDER WITH SIGNATURE(S) OF JUDGE(S)**

For Hearing of Bail Application

Applicant / Accused : Ms. Sumaira Bibi wife of Muhammad Imran
Through, Mr. Muhammad Javed, Advocate

Complainant / State : Through Ms. Abida Parveen Channar,
Special Prosecutor ANF

Date of Hearing : 19.2.2024

Date of Order : 19.2.2024

FIR No. 06 / 2023
U/s 6 / 9(1) Sr. 6 (c) & 6 / 9(2) Sr. 5, CNSA, 1997
P.S. ANF, Gulshan-e-Iqbal, Karachi

ORDER

1. **Sana Akram Minhas J:** The Applicant/accused seeks post-arrest bail in Crime No.6/2023 registered under sections 6, 9(1) Sr. 6 (c), 9(2) Sr. 5 of the *Control of Narcotic Substances Act, 1997 ("CNSA 1997")* after the same had been declined by the Special Court-I (CNS), Karachi. The instant Criminal Bail Application is the Applicant/accused's second Application against the impugned order dated 22.6.2023 as her first Criminal Bail Application (bearing No.1683/2023) was dismissed for non-prosecution vide this Court's order dated 12.9.2023.
2. According to the First Information Report (FIR), acting on intelligence provided by an informant, the Anti-Narcotics Force ("**ANF**") apprehended the Applicant/accused on 17.2.2023 at Quetta Bus Adda, Main Karachi-Hyderabad Super Highway, Sohrab Goth, Karachi. Upon immediate inspection of her handbag, authorities discovered 1000 grams of heroin, 900 grams of methamphetamine (ice crystal), her original CNIC, and a cellphone with a SIM card. Samples weighing 10 grams each of the seized substances were dispatched for chemical analysis. The FIR mentions that because bystanders were unwilling to serve as witnesses, the ANF personnel had no choice but to take on this responsibility.

3. Learned counsel for the Applicant/accused contended that she is innocent and falsely implicated by the ANF at the behest of a drug smuggler due to personal enmity; that she was apprehended from her residence and the purported recovery had been foisted upon her; that there was a delay of three (3) days before samples were sent for chemical analysis; that the alleged incident occurred in a densely populated area yet no independent witness had been cited by the ANF at the time of alleged recovery, contravening section 103 of *Criminal Procedure Code, 1898* (“**Cr.PC**”); that the complainant is the Investigation Officer (I.O) of the case; the belt numbers of involved officials are not disclosed.
4. On the other hand, learned Special Prosecutor ANF argued for dismissal of bail application on the grounds that the Applicant/accused was specifically nominated in the FIR and a sizeable quantity of narcotics had been recovered from her possession; that she did not deserve leniency merely because she was a woman; that evidence of ANF officials is as good as any other respectable person more particularly, in view of section 25 of the CNSA 1997; that no enmity, ill-will or grudge has been alleged against the prosecution witnesses; that samples could not be sent for analysis as the laboratory was closed since 18th–19th February 2023 were holidays being Saturday–Sunday; that ANF was an agency and, therefore, complaint and investigation are done by the same officer; that there is no concept of Belt Numbers in ANF; that as per Interim Challan the Applicant/accused had named the woman who had introduced her to drug trafficking and which woman was in Hyderabad jail.
5. I have heard the respective learned Counsel and perused the record.
6. In **Surraya Bibi v. The State** (2008 SCMR 825), the Supreme Court noted the disturbing trend of drug traffickers exploiting women and children for their crimes. Despite pleas for leniency on humanitarian grounds, the Court stressed the need for deterrent punishment, irrespective of the gender or age of the accused, to prevent further criminal activity and ensure appropriate consequences for drug trafficking.
7. The paramount concern for public welfare necessitates a cautious approach in exercising discretion under section 497 Cr.PC in cases involving the recovery of narcotics. This approach finds support in the Supreme Court's ruling in **The State v. Javed Khan** (2010 SCMR 1989).
8. In the case of **Socha Gul v. The State** (2015 SCMR 1077), it was established that bail in narcotics cases should be granted with caution, in consideration of section 51 of CNSA 1997. This section serves as a reminder of the gravity of the offense, constituting a crime against society.

9. In **Tahira Batool v. The State** (PLD 2022 SC 764), the Supreme Court emphasized that bail is generally granted unless the punishment falls within certain restrictive/prohibited categories, with denial being the exception. These principles echo those established in the case of **Tariq Bashir v. The State** (PLD 1995 SC 34). Additionally, the Court clarified that bail should typically be granted to, inter alia, women regardless of the offence, with refusal being the exception, as outlined in the first proviso to section 497(1) Cr.PC. This decision (in its paragraph 6) pointed out specific circumstances that may validate departing from this general rule.
10. While the *Tahira Batool* case bears significance, it does not universally mandate bail for women in every circumstance. Subsequently, in the case of **Mst. Fursan v. The State** (2022 SCMR 1950), the Supreme Court (in fact the same Bench of the Supreme Court which decided the *Tahira Batool* case) denied bail to a woman in a narcotic-related case. This decision aligned with the exceptions outlined in *Tahira Batool*, demonstrating that there are situations where bail may be denied to women.
11. Turning to the present case, it is established legal principle that during bail proceedings, a comprehensive examination is not undertaken; rather, a preliminary evaluation is conducted solely to determine the extent of an accused's involvement in the alleged offence. The offence in question pertains to a crime against society as a whole. The Applicant/accused was apprehended in possession of prohibited substances and caught in the act. There are no claims of animosity between the Applicant/accused and the ANF officers who apprehended her. There is also no suggestion of malicious intent or ill-will from the ANF that could have resulted in a false accusation nor any malafides are borne out from the record. No attempt was made by the Counsel for Applicant/accused to question the result of the chemical examination of the narcotics seized or to question its safe custody. As for the Applicant/accused's objection regarding the complainant also serving as the Investigation Officer (I.O) of the case, the Counsel failed to point out any legal bar. So also, with regards to the objection of late dispatch, it may be noted that Rules 4 & 5 of the *Control of Narcotic Substances (Government Analysts), Rules, 2001*, place no bar on the Investigation Officer to send the samples beyond 72 hours of the seizure. Reference in this context is made to **Gul Alam v. The State** (2011 SCMR 624).
12. With regards the contention of the Applicant/accused that the recovery was not witnessed by private witnesses, section 25 of CNSA 1997 explicitly excludes the application of section 103 Cr.PC. In addition, the FIR specifically records that due to the reluctance of bystanders to serve as witnesses, the ANF personnel were compelled to fulfill this role. The

assertion of the learned Special Prosecutor that the Applicant/accused is a flight risk is also not without force. The recovery has been made from the Applicant/accused who has been caught red-handed. Based on the record and submissions advanced, this is not a fit case for the grant of bail under section 51 of CNSA 1997.

13. For the foregoing reasons, the bail is denied and the instant Criminal Bail Application No.2662/2023 is dismissed.
14. It is clarified that the observations herein are tentative and the Trial Court shall not be influenced by the same while deciding the case on merits.

JUDGE

M. Khan