

## **IN THE HIGH COURT OF SINDH AT KARACHI**

### **CR. BAIL APPLICATION NO.649/2018**

Applicant : Iqbal @ Ecco,  
through Mr. Mehar Qadir Khan advocate.

Respondent : The State,  
through Mr. Abrar Ali Khichi, APG.

Date of hearing : 17.05.2018.

Date of announcement : 28.05.2018.

### **J U D G M E N T**

**SALAHUDDIN PANHWAR, J.** Applicant filed this second application before this Court seeking post arrest bail in Crime No.8/2016 u/s 6/9-C C.N.S. Act 1997, PS New Karachi Industrial Area.

2. Per FIR, facts of the case are that complainant ASI Akhtar Ali on 14.01.2016 at about 0410 hours lodged FIR stating that while he was busy in patrolling in the area alongwith other police officials, he received spy information that Iqbal alias *Iko* was present at his house situated at Khameso Goth alongwith his other companion and he was having huge quantity of *Charas* as well as involved in other cases of the same police station, therefore, the complainant reached at the pointed spot alongwith spy at about 0005 hours and raided the pointed house; accused persons upon seeing the police party fled away; police party chased them but accused succeeded to flee away. Accused persons were identified by the spy and accompanied police officials and on returning from the chase, police searched the house and from cupboard lying in a room four

plastic sacks were recovered containing heroin powder; from sack No.1 recovered 20 packets weighing 25 Kilo 800 grams, from sack No.2, 19 packets weighing 19 Kilo 645 grams, from sack No.3, 8 packets weighing 11 Kilograms and from sack No.4, 15 packets weighing 15 Kilo 485 grams heroin were recovered; on all packets yellow solution tape was wrapped and two Motor cycles bearing Engine No.67628, Chassis No.ASO67684 Bionek and second one bearing Engine No.026646 and Chassis No.028712 Asia Hero, were seized and heroin was sealed at the spot and prepared seizure memo was prepared at the spot; they returned back to P.S where FIR was lodged. Later on accused Iqbal alias Iko was arrested on 15.08.2016 at about 2035 hours by the SIP Abdul Wahid in FIR No.161/2016 u/s 6/9-C CNS Act.

3. Heard learned counsel for the parties and perused the record.

4. Learned counsel for applicant has argued that applicant/accused was not arrested at the spot; entire story mentioned in the FIR is false and fabricated; this Court has earlier directed the trial Court to proceed with the case and dispose it of within three months but even after such period, case has not been disposed of as yet and prosecution witnesses examined in this case could not prove the nexus of applicant with the property/house from where alleged contraband narcotic was recovered; that police had also not sealed that house properly; that Mst. Badar Bibi w/o Nawab Ali Bhutto resident of Khamisa Goth, moved an application on 14.12.2015 against SHO NKIA, Karachi and alleged that police of that P.S. took away two motor cycles bearing registration Nos.KEV-3553 and KIP-8674, as no action was taken she moved application u/s 22-

A & B Cr.P.C for lodging FIR against police officials which was disposed of vide order dated 02.01.2016 with direction to the SHO PS NKIA for lodging FIR; again said SHO P.S NKIA did not comply with the orders of the Court, as such Mst. Badar Bibi filed contempt application against SHO of that police station on 12.10.2016 however after some amicable settlement the application was withdrawn on 13.01.2016; that as reflected from record SHO PS NKIA on 14.01.2016 managed the case against the accused by foisting alleged recovery of narcotic substances with malafide intention and released the actual culprits; that entire story of the prosecution is doubtful; that there is no eye witness of such occurrence and the prosecution failed to prove nexus of applicant with the subject residential house and investigation is absolutely silent about it; admittedly accused was arrested after 8 months of the alleged occurrence and no incriminating articles recovered from his possession; prosecution failed to disclose about the ownership of the house from where alleged narcotic recovered. He has relied upon 2008 SCMR 1111, 2003 SCMR 881, PLD 2008 SC 376, 2002 PCrLJ 1429, 2012 YLR (Peshawar) 2617, PLD 2001 Peshawar 152, 2014 PCrLJ 482 (Sindh), 2013 YLR 547 (Lahore), 2001 YLR 2324 (Lahore), 2004 YLR 48 (Lahore), 2001 YLR 1848 (Karachi), 1999 SCMR 2147, 1997 SCMR 390, 2009 YLR 73 (Karachi), 1981 SCMR 935, PLJ 1989 SC 1990, 2010 YLR 624, 2003 YLR 1376, PLD 2009 SC 957, 1990 SCMR 1271, 1997 SCMR 412 and 2017 SCMR 1194.

5. Learned APG opposed bail application by arguing that first bail application of applicant was dismissed on 14.10.2016 by the trial Court whereas this Court dismissed his first bail application on 14.04.2017 with direction to trial court to conclude the trial expeditiously preferably within three months; that charge was farmed

against the accused on 04.03.2017 and after the order of this Court, prosecution succeeded to examine all three witnesses and only two witnesses are to be examined. He has submitted a list of FIRs where applicant is involved as an accused. He relied upon 2010 SCMR 1744, 2015 SCMR 1077 and PLD 2016 SC 11.

6. Report submitted by CRO, CIA, Karachi reflects that applicant is also involved in FIR No.161/2016, u/s 6/9-C of PS New Karachi Industrial Area, as well per list of criminal cases submitted by learned APG, applicant is involved in following cases:-

S NO.	FIR NO.	U/S	P.S.
1.	89/2005	3/4 Prob.	NKIA
2.	05/2006	147/148/149/506-B/34	NKIA
3.	209/2008	6/9-B CNSA	NKIA
4.	146/2008	3/4 Prob	NKIA
5.	108/2008	3/4 Prob	NKIA
6.	85/2009	6/9-B CNSA	NKIA
7.	367/2010	6/9-c CNSA	NKIA
8.	369/2010	13-d	NKIA
9.	4/2011	3/4 Prob.	NKIA
10.	378/2013	3/4 Prob.,	NKIA
11.	8/2016	6/9-C CNSA	NKIA
12.	161/2016	6/9-C CNSA	NKIA

7. Heard and perused the available material carefully.

8. Since, earlier dismissal of bail plea of the applicant / accused by this trial court as well this Court is not a matter of *dispute*. The fresh bail plea was moved by the applicant / accused before trial Court after expiry of period of three months upto which the trial Court was advised to *preferably* conclude the trial. Here, I would say that such direction (s) for conclusion of *trial* by this Court would never earn the status of **statutory period** (creation by legislature), so detailed in the Section 497(i) Cr.PC whereby the

accused *normally* becomes entitled for concession of bail subject to *prima facie* proving the delay to have not occasioned by him or one acting on his behalf. The purpose of such direction was / is always in line with settled maxim of law i.e ***justice delayed is justice denied.*** Thus, I would conclude that mere expiry of such *direction* alone would not permit him to claim bail as a matter of *right* but he would continue under obligation to bring his case within meaning of *further inquiry* , if case is falling in prohibitory clause of section 497(i) Cr.P.C.

9. Now, I would revert to merits of the case, three witnesses have been examined and only two are remaining to be examined. I would add that on dismissal of bail plea by this court on *merits* the applicant / accused has to show existence of reasonable grounds to believe his innocence with reference to fresh material which is nothing but evidence *later* came on record. It may further be added that while making grounds of *further inquiry* even with reference to evidence the *principle* of tentative assessment shall continue. It may be added that *tentative assessment* would only permit those facts which *prima facie* floating on surface and can be viewed without any deep dive.

10. Having said so, I would examine the bail plea of the applicant / accused. There is *huge* quantity involved in the case though same *alone* is not sufficient to withhold the bail yet is a circumstance which tilts the case in favour of prosecution at bail stage. The earlier dismissal of bail plea by this court is still in *field*; the applicant / accused has not been able to show existence of reasonable grounds to believe his *innocence* by *tentative assessment*. In absence whereof, the applicant / accused charged with an offence, falling within prohibitory clause of section 497(1) Cr.PC would not be

entitled for concession of bail particularly when such offence also falls within category of **offence against the society**. Remaining of two witnesses in conclusion of trial is also one of the circumstances which tilts the case in favour of the prosecution.

11. In consequence to what has been discussed above, the bail plea, being meritless, is hereby dismissed. However, it needs not be mentioned that if at any stage the accused feels to have make out *fresh grounds*, justifying his release on bail, he may repeat the bail plea as the provision of section 497 Cr.PC restrict the release only for reasons, mentioned thereon which however does not include any *particular* stage of proceedings. The trial court is also directed to take positive steps in ensuring completion of trial within one month.

**J U D G E**

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