

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Cr. Bail Application No.808 of 2024
(Suleman vs. the State)

Cr. Bail Application No.869 of 2024
(Farooq Moorad vs. the State)

Date	Order with signature of Judge
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PRESENT:
Mr. Justice Arshad Hussain Khan
Ms. Sana Akram Minhas

Mr. Khuda Dino Sangi, advocate for applicant in Criminal Bail Application No.808/2024

M/s. Mehmood Alam Rizvi and M. Aibak Ali, advocates for applicant in Criminal Bail Application No.869/2024.

Mr. Altaf Ahmed Sehar, Assistant Attorney General a/w Malik Junaid, Inspector, FIA Circle Karachi, Shoaib Ahmed FID DRAP and S. Jamil Ahmed Assistant Director (Legal)

Date of hearing and order : 01.07.2024

ARSHAD HUSSAIN KHAN J: Through Criminal Bail Application No.808/2024 applicant / accused namely Suleman son of Abdul Karim Moorad sought protective bail in Crime No.08/2024, under Section 23 & 27 of the Drugs Act, 1976, registered at P.S. FIA Corporate Crime Circle, Karachi, which was converted into ad-interim pre-arrest bail and he was admitted to interim pre-arrest bail by this Court vide order dated 08.04.2024, now he seeks confirmation of the same. Whereas through Criminal Bail application No.869/2024 applicant / accused Farooq Moorad son of Abdul Karim seeks post arrest bail in aforesaid (same) crime.

Facts of the case need not to be reiterated here as the same have already been stated in the FIR, impugned order and bail application.

Learned Counsel for the Applicants submit that the applicants / accused are innocent and have been falsely implicated in the above case with malafide intention and ulterior motives. They further submit that none of the medicine is spurious, counterfeited, misbranded, adulterated, substandard or expired and same has not been included in challan, as such, section 23 of the Drugs Act does not

attract in the instant matter, hence the offence if any, does not fall within the prohibitory clause of Section 497 Cr.P.C. They further submit that no independent witness has been cited as witness of alleged recovery, which makes the case of the prosecution doubtful. They further submits that minimum punishment for the offence is three (03) years, which comes within the definition of short sentences, as such, the applicants are liable to be enlarged on bail on this sole ground. They further submit that the allegations leveled against applicants / accused are general in nature, therefore, at this stage of bail, the possibility of false implication of applicant / accused could not be ruled out. They further submit that the applicants / accused are no more required for further investigation and keeping them behind the bars would not serve any purpose. They pray for confirmation / grant of bail to the applicants / accused on the above grounds.

Learned Assistant Attorney General while opposing the confirmation / grant of bail to the applicants / accused submits that sufficient material is available on record which prima facie connects the applicants in the instant crime. He further submits that names of applicants are mentioned in the FIR and recovery was affected from them, as such, they are not entitled for bail at this stage.

I have heard learned Counsel for the applicants and learned Additional Prosecutor Sindh as well as perused the record with their assistance.

Bare reading of section 23 shows that it has been restricted to the extent of export, import or manufacturing for sale or selling any spurious drug. Mere possession of a spurious drug has not been made punishable under section 27 of Drugs Act, 1976. In the present case the applicants have been implicated in the case on the basis that huge quantity of alleged unregistered and suspected spurious drugs were seized but nothing is available on record to show that they were selling the same. In the case of Muhammad Nadeem v. the State [2018 P Cr. L J 881] it has been observed that :-

“....Mere possession of a spurious drug has not been made punishable under section 27 of Drugs Act, 1976. The offences, the petitioner is charged with, does not fall within the realm of provisions as contained in subsection (1) of section 497, Cr.P.C., therefore, I am of the opinion that a case for grant of bail has been made out.”

On tentative assessment of the material available on record, it appears that the applicants have been booked for violation of section 23 of the Drug Act,

which is punishable under section 27 of the Drug Act, 1976 providing punishment with imprisonment which shall not be less than 03 years or extend to seven years and with fine which may extend to one lac rupees. Nevertheless minimum sentence has to be taken into consideration in order to determine whether the offence falls within prohibitory clause. The offence as such does not fall within prohibitory clause. In the absence of any exceptional circumstances referred to in case of "*TARIQ BASHIR and 5 others v. The State*" [PLD 1995 SC 34] withholding of post arrest bail is not intention of law. The applicant-Farooq Moorad is in judicial lock up for last more than three months. Investigation of the case has been completed and all the material / evidence are in possession of the prosecution, as such, keeping the applicants behind the bars is nothing but a pretrial punishment which is against the spirit of law.

Besides above, the charges levelled against the applicants / accused could only be determined by the trial court after recording and evaluating the evidence. Reference can be made to the case of *Manzoor Hussain and 5 others v. The State* [2011 SCMR 902]. It is also settled principle of law that at the bail stage deeper appreciation into merit of the case cannot be undertaken and only tentative assessment of the material available is to be made. Moreover, applicants are no more required for any investigation nor the prosecution has claimed any exceptional circumstance.

In view of the above facts and circumstance, we are of the view that the applicants have made out their case for grant / confirmation of bail, as such, interim pre-arrest bail already granted to the applicant / accused Suleman son of Abdul Karim Moorad by this court vide order dated 08.04.2024 in Criminal Bail Application No.808/2024 was confirmed on same terms and conditions however, subject to furnishing additional solvent surety in the sum of Rs.400,000/- (Rupees Four Lacs only) and P.R. Bond in the like amount to the satisfaction of the Nazir of this Court whereas the applicant Farooq Moorad son of Abdul Karim was granted post-arrest bail in Criminal Bail Application No.869/2024 subject to his furnishing solvent surety in the sum of Rs.500,000/- (Rupees Five Lacs only) and PR bond in the like amount to the satisfaction of Trial Court vide our short order dated 01.07.2024.

Needless to mention here that any observation made in this order is tentative in nature and shall not affect the determination of the facts at the trial or influence the trial court in reaching its decision on the merits of the case. It is,

¹ 2013 MLD 140 [Sajid Iqbal v. the State and others]

however, made clear that in the event if, during proceedings, the applicants / accused misuse the bail, then the trial court would be competent to cancel their bail without making any reference to this Court.

Above are the reasons of my short order dated 01.07.2024.

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