

ORDER SHEET
IN THE HIGH COURT OF SINDH, AT KARACHI.

Criminal Bail Appln. No.1961 of 2023

Date	Order with signature of Judge
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For hearing of bail application.

01.04.2024.

Mr. Naveed Baloch, Advocate for the applicant.
Mrs. Abida Parveen Channar, Special Prosecutor ANF.

Mohammad Karim Khan Agha, J. Applicant Hafeez Ahmed S/o. Mir Muhammad is facing trial before the Special Court-II (CNS) Karachi in Special Case No.37 of 2020 in respect of FIR No.12/2020 under section 6/9(c), 14 & 15 of CNS Act, 1997 registered at PS ANF-I, Karachi. He applied for post arrest bail which was declined vide order dated 11.08.2023, hence, the applicant has approached this Court for bail on statutory grounds.

2. Brief facts of the case are that on 24.08.2020 based on spy information, the applicant was arrested from a car which was coming to Karachi. The ANF raiding party stopped the vehicle where the applicant was sitting on the driving seat and on search of the vehicle, 02.500 kilogram *heroine* and 02 kilogram *Charas* was recovered, thereafter the applicant was arrested and he and the case property were taken to the Police Station where the aforesaid FIR was lodged.

3. I have heard the learned counsel for the parties and perused the record.

4. The applicant has applied for bail on statutory grounds. He has spent so far almost 04 years in jail. I have gone through case diaries which reveal that delay in the trial is not particularly on the part of the applicant. The progress report from the trial Court dated 27.03.2024 has admitted that the delay has been caused on unavoidable circumstances. This appears to be on account of the Court being vacant. The applicant is neither a previous convict nor is a hardened, desperate or dangerous criminal. Under the statutory ground for delay even in murder case, the trial must be completed within 02 years and if it is not then the applicant is entitled to bail provided that the delay has not been caused on his part. As noted above, the delay has been

caused on the part of the State in keeping the concerned trial Court vacant where the case was to be heard. It is astonishing to note that after a period of almost 04 years, only charge has been framed and evidence of one out of five PWs has been recorded. The latest progress report reveals that the concerned trial Court is once-again lying vacant and there appears no hope of trial being finalized in near future as still four PWs to be examined.

5. Under these circumstances I find that the applicant is entitled to post-arrest bail on statutory grounds of delay and accordingly the post-arrest bail is granted to the applicant Hafeez Ahmed S/o. Mir Muhammad subject to furnishing his solvent surety in the amount of Rs.10,00,000/- (Rupees ten lac. only) and P.R. Bond in the like amount to the satisfaction of the trial court.

6. Since bail has been granted on statutory grounds this would have no bearing on the merits of the case which shall be decided on evidence produced before the concerned trial Court, hence, Special Case No.37 of 2020 shall immediately be transferred to Special Court-II (CNS) Karachi as it appears that Special Court-I (CNS) Karachi has once-again fallen vacant. A copy of this order shall be sent to Special Court-II (CNS) Karachi who shall ensure the receipt of R&PS and the case file and proceed with trial expeditiously.

7. According to Special Prosecutor, ANF, there are approximately 5000 Narcotics cases pending before only 03 Special Courts (CNS), one of which is currently vacant, which number of Courts is clearly inadequate to deal with the aforesaid number of narcotics cases which defeats the right of the accused to an expeditious trial which is *prima facie* violation of Article 10-A of the Constitution. A copy of this order shall be sent to Federal Ministry of Law & Justice who shall ensure that more Special Courts for trial of Narcotics Substances are established in Karachi and other parts of the Province so that the narcotics cases can be dealt with expeditiously in the Province and that accused do not spend years in jail awaiting decision in their respective cases.

8. The bail application is disposed of in the above terms.

JUDGE