

## IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Bail Application No. 406 of 2018

Applicant : Zardullah Khan through Mr. Farrukh Nawaz  
Khan, Advocate.  
State : Mr. Habib Ahmed Special Prosecutor ANF.  
Date of hearing : 07.04.2018.

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### **ORDER**

**Adnan-ul-Karim Memon, J.** – The Applicant Zardullah Khan is seeking Post Arrest Bail in F.I.R No.64/2013, registered at Police Station Anti-Narcotic Force-II, Muhammad Ali Society Gulshan-e-Iqbal Karachi, for offences punishable under Section 6 read with Section 9 (c), Control of Narcotic Substances Act, 1997.

2. Brief facts of the prosecution case are that on 03.12.2013 at about 1800 hours Inspector / SHO Tahir Ahmed Bhatti of Police Station Anti-Narcotics Force, Muhammad Ali Society, Gulshan-e-Iqbal Karachi lodged F.I.R against Applicant, that he received spy information that one Zardullah Khan son of Shuja Alam used the ‘E’ Form of M/s Farooq Enterprises, Karachi and smuggling huge quantity of heroin through container bearing No. MSKU-1599141 to Kampala (Uganda). On such information a raiding party was constituted headed by himself, Inspector Bin Yamin; Inspector Shiraz; HC Abdul Razzak; HC Saleem Ahmed; HC Ali Sher ; PC Riaz Ahmed ; Masood; PC Riaz Amjad; PC Meraj; PC Zia Mustafa and other ANF staff, under the supervision of AD Mashooq Ali Brohi, left Police Station ANF Gulshan-e-Iqbal, Karachi, as per Roznamcha Entry No. 10 at 1600 hours, on 02.12.2013 in official

vehicles duly armed and reached at about 1700 hours at examination 'K' yard, QICT, Karachi. The Complainant party met with clearing agent of Container No. MSKU-1599191, namely Khalid Amjad Khan, an employee of one Shakil/M/s F.K Enterprises. Khalid Amjad produced consignment note; Customs Invoice/packing list and 'E' Form to the complainant and according to the said documents, sanitary goods and oil filters were shown loaded in the said container to be exported to Kampala (Uganda). Clearing agent Khalid Amjad Khan further disclosed that real owner of the consignment is one Zardullah Khan, who is waiting at the parking area for clearance of container. On such disclosure, Zardullah Khan was called through clearing agent Khalid Amjad Khan, who came and admitted that he is owner of the consignment that he used 'E' Form of M/s Farooq Enterprises, Karachi. Peoples available at the spot were asked to act as witnesses but due to fear of drug smugglers they refused to act as mashir, therefore, HC Abdul Razzak and PC Meraj Ahmed were nominated as witnesses, in presence of Zardullah, (applicant) seal of container bearing No. ML-PK-1023854 was broken and opened from which 1561 cartons were recovered, which were thoroughly checked, out of which 187 cartons were found with 12/12 oil filters, containing heroin powder wrapped with yellow color adhesive tape were recovered, same was weighed at the spot and found to be 373 K.Gs. from one carton six thellies of heroin powder weighing one KG was also recovered, thus from 188 cartons 375 K.Gs of heroin powder was recovered and the same were kept in 15 nylon bags and marked at Serial No. 1 to 15 and sealed under mashirnama 500/500 grams of heroin powder was taken from each of three nylon bags for chemical analysis. Accused Zardullah Khan was arrested. Memo of arrest and recovery was prepared at the spot in presence of said witnesses. Thereafter the arrested accused along with recovered narcotic substances was brought at Police Station, where

Complainant Inspector Tahir Ahmed lodged FIR No. 64/2013 Under Section 6/9-C CNS Act, at Police Station ANF-II Karachi.

3. Investigating Officer submitted Charge Sheet on 24.12.2013, before the Special Court for Control of Narcotic Substances-I Karachi. The Applicant moved first Bail Application in Special Case No.1187 of 2013, before the learned Trial Court, which was dismissed vide Order dated 02.04.2014 and second time he moved another Bail Application, which was also dismissed vide Order dated 21.06.2016 and third time Applicant moved another Bail Application, which was dismissed on 07.11.2016. Finally the Applicant approached this Court by filing Bail Application No. 1675 of 2016 and this Court dismissed the same on merit vide order dated 03.08.2017, with direction to the learned Trial Court to examine the material witnesses within a period of two months, however the applicant's Bail Application was declined by the learned Trial Court vide order dated 19.01.2018. Applicant being aggrieved by and dissatisfied with the impugned order dated 19.01.2018 has filed the instant Bail Application on the ground of statutory delay. As per report dated 22.03.2018 submitted by the learned Special Court CNS-II Karachi, that seven Prosecution witnesses have been examined during the trial proceedings, which prima facie show that the trial Court has made certain progress in the trial.

4. Mr. Farrukh Nawaz Khan, the learned counsel for the Applicant at the very outset stated that he is only pressing the Bail Application on statutory ground and argued that the Applicant has remained in jail for more than four years without conclusion of the trial as per direction issued by this Court in the above matter but the same direction has not been complied with, which needs serious attention of this Court. Besides that the Prosecution has examined seven witnesses and nothing has been brought on record against the Applicant; that even

the case property was not produced before the learned trial Court during examination of the witnesses and even the case property has been burnt; that the Prosecution witnesses have not supported the prosecution case; that under third proviso of Section 497 (1) Cr.P.C the Applicant is entitled to the concession of bail as Prosecution has failed to conclude the trial within the stipulated period of time, even the Applicant is incarcerated in jail without trial, which is violation of the fundamental right of the Applicant as such the Applicant is entitled to the concession of bail on the ground of delay; that this is a case of hardship, therefore the Applicant is entitled for bail; that the Applicant is ready to furnish the solvent surety to the satisfaction of this Court. The learned counsel in support of his contention has relied upon the case of Mubarak Ali and another Vs. The State (1998 Pak. Cr. L.J 238).

5. Mr. Habib Ahmed, learned Special Prosecutor ANF has contended that the Prosecution has complied with the direction of this Court and has examined the seven witnesses; that the applicant may have a ground of inordinate delay in conclusion of the trial as such prayed that if the direction is given to the learned trial Court to conclude the trial of the case by examining the remaining witnesses within a reasonable time, which will meet the ends of justice; that in Narcotics cases the plea of statutory delay is not available to the Applicant. In support of his contention he relied upon the case reported in 2013 SCMR 1538 and argued that remaining in jail for more than four years in Narcotics cases is no ground for bail as the offences applied in the present case entail imprisonment for life or death.

6. I have heard learned counsel for the Applicant, learned Special Prosecutor for Anti-Narcotic Force, and perused the material available on record as well as case law cited at the Bar.

7. While deciding the instant Bail Application, I have noticed that this Court vide order dated 03.08.2017 dismissed the bail application of the present Applicant on merit with the following observations:-

***“Tentative assessment of the record reflects the following aspects of the case:***

- i) Applicant is arrested red-handed with huge quantity of 375 K.G of heroin (Narcotics Substances) from container, which contained an export consignment.***
  - ii) Applicant has been booked by the prosecution as main exporter of the subject consignment in the present case as he used E-Form of Farooq Enterprises.***
  - iii.) PW Khalid Ahmed Khan has deposed in the trial court that the owner of the container was present in the parking area, and applicant was called who admitted his guilt***
  - iv). Inspector Tahir had broken the seal of the container in presence of applicant and recovered 375 KG of heroin from oil filters.***
  - v). Applicant had acquired the go down from Khalid Ahmed Khan only for storage of sanitary material and he filed undertaking regarding the goods for exporting such container.***
  - vi). The recovery of heroin powder was duly witnessed by the police officials, who are as good witnesses as any other person and who had no ostensible reason to falsely implicate the Applicant in a case of serious nature.***
  - vii) Chemical Examination Report of subject narcotic substance is positive which supports the prosecution case.***
  - viii). Case of the Applicant is hit by prohibition contained in Section 51 of the Control of Narcotic Substances Act, 1997.***
  - ix). No material has been produced to suggest that the applicant is falsely implicated in the alleged crime.***
- 09. Reverting to the arguments of non- performance of provisions of Section 103 Cr.P.C, Section 25 of Control of Narcotic Substances Act, 1997, excludes applicability of Section 103 Cr.P.C., therefore no case of further enquiry is made out. Reliance is safely made in the case of the State Vs. Aleem Haider (2015 SCMR 133), Socha Gul Vs. The State (2015 SCMR 1077), so far as rule of consistency is concerned, the same can only be pressed, if an accused with similar and identical role was released on bail by the Court and others were declined the same concession, therefore same analogy is not applicable in the present case. Merely saying that Applicant has been implicated by Anti-Narcotic Force is not sufficient to discard the prosecution story as false, which is even otherwise a factual controversy and, at bail stage only tentative assessment of the record is to be made. Reverting to***

***the plea raised by the Applicant that handwriting experts report does not support the prosecution case, suffice it to say that this aspect of the case requires evidence and the Trial Court is seized of the matter to look into that aspect of the case, as at the bail stage this is hardly a ground of bail. Besides that the offence falls Under Section9 (c) of Control of Narcotic Substance Act, 1997,which is punishable with life imprisonment. So far as statutory ground is concerned, it is now settled by the pronouncement of judgments by Honorable Supreme Court that even bail can be refused on the statutory ground, if circumstances so warrants, since present case is of serious nature as huge quantity of heroin powder is recovered and the Applicant has been charged for that offence, whereas the Trial Court has examined PW/Inspector Tahir Ahmed, PW/Shakil Ahmed and PW/Khalid Ahmed Khan. Per prosecution, witnesses have supported the case and Trial is at the verge of conclusion and can be concluded within a period of two months, on this aspect I am fortified by the decision rendered by the Honorable Supreme Court in the case of Babar Hussain Vs. the State and others (2016 SCMR 1538), case diaries of Trial Court reflects that trial is in progress.***

- 10. In view of the above facts and circumstances, the Applicant has not made out a case for grant of bail at this stage; therefore, the instant bail application is dismissed.***
- 11. The case law cited by the learned counsel for the Applicant is distinguishable from the facts and circumstances of the case in hand.***
- 12. The findings mentioned above are tentative in nature, which shall not prejudice the case of either party at the trial stage. However, the learned Trial Court is directed to record evidence of other material witnesses within a period of two months, where after the Applicant will be at liberty to move fresh Bail Application before the learned Trial Court on fresh ground, if any.***
- 13. That above are the reasons of short order dated 03.8.2017.”***

8. The grounds, other than inordinate delay in conclusion of the trial, which are taken by the learned counsel for the Applicant in the present proceedings have already been taken care of in the aforesaid order and considered, however the only ground which remains to be taken care of is the ground of inordinate delay in conclusion of the trial.

9. I have noticed that the learned trial Court has very elaborately explained the position at paragraph 9 of the impugned order dated 09.01.2018 regarding direction passed by this Court vide order dated 03.08.2017. The learned trial Court has considered the ground of

delay in conclusion of the trial. I am of the considered view that the matter is in progress as per report submitted by the learned Trial Court.

10. In view of above facts and circumstances of the case Applicant has failed to make out case for grant of bail at this stage, when the trial is at the verge of conclusion, therefore, Bail Application is dismissed.

11. The above observation is tentative in nature which shall not prejudice the case of either party at the trial.

12. From the forgoing, the learned Trial Court is directed to record evidence of the remaining witnesses within a period of two months, where after the Applicant will be at liberty to move fresh Bail Application before the learned Trial Court on fresh ground if any and the learned trial Court shall decide the same on merit, keeping in view the judgment rendered by the Hon'ble Supreme Court of Pakistan in the case of Imtiaz Ahmed Vs. The State, through Special Prosecutor ANF, (2017 SCMR 1194).

13. I expect from the learned trial Court that the direction of this Court, particularly in the bail matters shall be adhered to in future and valid reasons are to be assigned, if the trial is not concluded within the stipulated time.

14. That above are the reasons of my short order dated 07.04.2018, whereby I have dismissed the bail application of the applicant.

JUDGE

Karachi  
Dated: - 10.04.2018

**Shafi Muhammad P.A**