

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Amjad Ali Sahito

Criminal Bail Application No.715 of 2020

Applicants : (i) Hameed Ullah S/o Faiz Mohammad
(ii) Tanveer Abbas S/o Ghulam
Muhammad
(iii) Muhammad Riaz S/o Muhammad
Shareef
Through Muhammad Akbar Khan,
Advocate

Respondent : The State
Through Mr. Muhammad Ahmed,
Assistant Attorney General of Pakistan
& Mr. Raja Ghulam Murtaza, Special
Prosecutor Pakistan Coast Guards

Date of hearing : 09.09.2020

Date of order : 09.09.2020

ORDER

AMJAD ALI SAHITO, J -- Through this second Bail Application, applicants/accused seek post-arrest bail in Crime No.1004/2017 registered under Section 9(c) of CNS Act, 1997 at PS Battalion Pakistan Coast Guard HQ, after their second bail plea has been declined by learned Judge, Special Court-I (CNS), Karachi vide order dated 27.04.2020.

2. The details and particulars of the FIR are already available in the bail application and FIR, same could be gathered from the copy of FIR attached with such application, hence, needs not to reproduce the same hereunder.

3. Learned counsel for the applicants/accused has mainly contended that applicants/accused are innocent and have falsely been implicated in this case, such contentions have also been confirmed by the I.O. of the case, who in his cross-examination admits that **it is correct that applicants/accused are innocent and have falsely been**

implicated in this case; that the evidence has been completed and now the case is fixed for statement of the applicants/accused; that from the evidence, there is no case of conviction of the applicants/accused hence, they are entitled for concession of post-arrest bail.

4. On the other hand, learned AAG as well as learned Special Prosecutor Pakistan Coast Guard have vehemently opposed for grant of post-arrest bail on the ground that prior to this, applicants/accused moved another bail application before this Court, which was dismissed on merits while directing the trial Court to conclude the matter within three months, such compliance has been and now the case is fixed for statement of the applicants/accused and likely to be concluded within one month.

5. I have heard the learned counsel for the parties and gone through the material available on record. Admittedly, the first bail application of the applicants/accused has been dismissed vide order dated 01.08.2017 by observing that huge quantity of about 37 kg chars was recovered from the bus. As far as the plea urged by the learned counsel that since the trial Court has failed to conclude the trial, therefore, the applicants are entitled to bail is concerned, the Hon'ble Supreme Court in the case of 'NISAR AHMED V. The STATE and others' [PLD 2016 Supreme Court 11] has held as under:-

“4.....Neither non-compliance of the directions issued to the trial Court to conclude the trial expeditiously or within some specified time can be considered as valid ground for grant of bail to an accused, being alien to the provisions of section 497, Cr.P.C, nor filing of direct complaint will have any bearing as regards earlier bail refusing orders which have attained finality, unless some fresh ground could be shown by the petitioner for consideration of his request for grant of bail afresh, which is lacking in the present case.”

In another case of 'TALLAT ISHAQ v. NATIONAL ACCOUNTABILITY BUREAU through Chairman and others' [PLD 2019 Supreme Court 112], the Hon'ble Supreme Court has also observed while clinching the issue that mere delay in conclusion of a trial or longevity of the period of incarceration of an accused person could not by itself entitle him to bail.

6. Furthermore, non-compliance within the time specified by this Court for the conclusion of the trial while deciding the earlier bail application of applicant/accused cannot be deemed to be a fresh ground for bail. In the instant case, all witnesses have been examined and now the case is fixed for statement of applicants/accused and no fresh ground is in existence, which may entitle the applicants for the grant of bail. Further, the plea of learned counsel for the applicants/accused that I.O. has stated in his cross-examination that applicants/accused are innocent and implicated falsely, any observation at this time may be prejudice for either party, therefore it has no ground for grant of bail. The offence is not bailable and carries the death penalty or imprisonment for life and it does falls within the ambit of section 497 (1) Cr.P.C. In view of the above facts and circumstances, the applicants/accused have failed to make out a case for grant of bail. Accordingly, instant criminal bail application is **dismissed**. However, the learned trial Court is directed to conclude the case preferably within two months after receipt of this order.

7. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the case of the applicants on merits.

JUDGE

Kamran/PA