

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Amjad Ali Sahito

Criminal Bail Application No.905 of 2020

Applicants : Saqib Ashraf S/o Muhammad Ashraf
Through Mr. Sardar Sheraz Anjum
Advocate

Respondent : The State
Through Ms. Abida Parveen Channar
Special Prosecutor ANF

Date of hearing : 25.08.2020

Date of order : 25.08.2020

ORDER

AMJAD ALI SAHITO, J -- Through this Bail Application, applicant/accused seeks post-arrest bail in Crime No.D030700317 registered under Sections 6/9-C CNS Act, 1997 of PS ANF Muhammad Ali Society, Korangi Karachi, after his bail plea has been declined by the learned Judge, Special Court-I, (CNS), Karachi vide order dated 06.02.2020.

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 applicant/accused mainly contended that before this Bail Application, applicant/accused was filed bail application bearing No.574/2019, which was dismissed as not pressed on the ground that if learned trial Court may be directed to decide the case within one month. Such direction was given vide order dated 08.07.2019. Thereafter, another bail application bearing No.369/2020 was filed by the applicant/accused, same was dismissed for non-prosecution. Again,

applicant/accused preferred a bail application before the trial Court which was dismissed vide order dated 06.02.2020 and being aggrieved, applicant/accused has impugned the said order. Per learned counsel, the challan was submitted on 02.02.2017 by the I.O. by showing the applicant/accused in custody and charge was framed on 05.12.2017, since then, no progress has been made. Learned counsel further submits that only recovery has been effected from the applicant/accused is 900 grams heroin; though the total recovery is 3600 gram which was recovered from the vehicle being driven by co-accused Syed Mazhar Abbas; hence applicant/accused has no concern with the alleged offence. He lastly prays for grant of bail.

4. On the other hand, learned Special Prosecutor ANF has vehemently opposed for grant of bail on the ground that huge quantity is recovered from the applicant/accused, therefore, he is not entitled for concession of post-arrest bail.

5. I have heard the learned counsel for the parties and have perused the material available on record. As far as the plea urged by the learned counsel that since the trial Court has failed to conclude the trial, therefore, the applicant is 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 as cited by learned APG 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, as per progress report of the learned trial Court, charge has been framed and now the witnesses are in attendance and there is no chance further delaying of the trial and trial Court is expected to comply with the directions of this Court passed in earlier bail application. As far as merits of this bail application are concerned, I have perused the material which reflects that the applicant/accused was arrested on the spot and recovery of 3600 grams heroin powder was effected from the vehicle and more recovery of 900 grams from the flat. There is no denial regarding the presence of the applicant/accused in the subject vehicle; hence, prima facie, sufficient material is available on record to connect the applicant/accused with the offence.

7. In view of the above, learned counsel for the applicant has failed to make out a case for grant of post-arrest bail. Accordingly, the instant Bail Application is **dismissed**. However, the learned trial Court is directed to take all the coercive measurement to procure the attendance of the witnesses and proceed with the case on day to day basis and complete the trial within 30 days after receipt of this order. It is made clear that no adjournment shall be granted to either party without any cogent reason.

8. 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.

Kamran/PA

JUDGE