

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No. 1887 of 2019

Date	Order with signature of Judge
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For hearing of Bail Application.

10.01.2020

Mr. Khalid Hussain Chandio, Advocate for the applicant.
Ms. Abida Parveen Channar, Special Prosecutor ANF.

ORDER

Muhammad Saleem Jessar, J:- Through this application, applicant Fayaz seeks his release on post arrest bail in Crime No. 29/2019 of P.S ANF, Muhammad Ali Society, Korangi, under Section 6/9-B, 14, 15 CNS Act. Prior to this, he preferred such plea before the trial Court which by means of order dated 29.11.2019, was dismissed. The case, as stated, has been challaned which is now pending for trial before the Court of Special Judge, CNS-I, Karachi vide Special Case No. 232/2019 (Re-the State Versus Fayaz), hence this bail application.

Since the facts of the case are already mentioned in the FIR as well as impugned order, therefore, there is no need to reproduce the same.

Learned counsel for the applicant submits that meager quantity of heroin powder has been shown to have been recovered from his possession, therefore, the case against him does not exceed the limits of prohibitory clause of Section 497 Cr.P.C. Learned counsel for the applicant further submits that infact ANF police at airport had dragged the applicant so that applicant may grease their palms which the applicant could not arrange, hence complainant of the case became annoyed and by taking somersault has foisted alleged contraband upon him and arrayed the applicant as an accused. He further submits that so many people including passengers, staff of different travel agencies always used to be available over the airport but the police for their malafide intention and ulterior motives did not opt to associate any independent person from the airport as mashir/witness to witness the recovery proceedings. He further submits that complainant and witnesses are from ANF, therefore, they

being inimical as well as interested, their testimony cannot safely be relied upon to maintain the conviction against the applicant. He further submits that circumstances gathered bring the case of applicant to be of further inquiry within the meaning of sub-Section 2 to Section 497 Cr.P.C and prays for his release on bail. In support of his contention, he has placed reliance upon the cases of (i) *QAMAR HUSSAIN Versus THE STATE (2011 YLR 2327)*, (ii) *RAEES KHAN Versus The STATE (2017 YLR 2308)* & *ABDUL NAEEM Versus THE STATE (2012 MLD 1713)*.

On the other hand, learned Addl. Prosecutor General, Sindh opposes the bail application but not seriously on the pretext that meager quantity of contraband has been shown to have been recovered from his possession. Moreover, airport being full of passengers, many peoples were available around; however, none from the public or passengers has been shown or acted as mashir(s) to witness the recovery proceedings.

Heard arguments and perused the record. Admittedly, the place of incident is a public thoroughfare viz-a-viz airport where number of people used to remain available. No doubt, application of Section 103 Cr.P.C stands ousted in the Act, yet when a person was going to be charged with an offence which carries punishment in shape of imprisonment then it was incumbent upon the police officer to associate independent person of the area to witness the recovery proceedings. The challan of the case has been submitted before the trial Court and the applicant is no more required by the police for purpose of the investigation or interrogation. All the PWs are from police department, therefore, question of tampering with the prosecution evidence or absconding away of the applicant does not arise.

It is well settled principle of law that every accused presumed to be blue eyed boy of the law until and unless he may be found guilty of the charge and law cannot be stretched upon in favour of the prosecution particularly at bail stage, therefore, further detention of the applicant will not serve any technical or legal purpose. In my view, the case against the applicant is purely covered by sub-section 2 to Section 497 Cr.P.C and requires further inquiry. Consequently, instant bail application is hereby allowed. The applicant shall be released on bail subject to furnishing his

solvent surety in the sum of Rs. 100,000/- (Rupees One Lac) and PR Bond in the like amount to the satisfaction of the trial Court.

It need not to iterate that the observation made hereinabove is/are tentative in nature and shall not prejudice the case of either party during trial. However, the learned trial Court may proceed against the Applicant, if he will be found misusing the concession of bail.

This Criminal Bail Application is disposed of in the manner indicated above.

JUDGE

Zulfiqar/P.A