

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Amjad Ali Sahito

Criminal Bail Application No.738 of 2021

Applicant : Syed Mazhar Abbas S/o Syed Riaz Hussain
Through Mr. Asif Ali Pirzada, Advocate

Respondent : The State
Through Mr. Habib Ahmed, Special Prosecutor ANF

Date of hearing : 02.06.2021

Date of order : 02.06.2021

ORDER

AMJAD ALI SAHITO, J -- Through this Bail Application, the applicant/accused seeks post-arrest bail in Crime No.D030700317/2017 registered under Sections 6, 9(c), 14, 15 CNS Act, 1997 at PS ANF Muhammad Ali Society, Korangi, Karachi, after his bail plea has been declined by the learned Judge, Special Court-1, (CNS), Karachi vide order dated 29.03.2021.

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 mainly contended that applicant/accused is innocent and has falsely been implicated in this case; that prior to this, applicant/accused filed Criminal Bail Application No.1577/2017 before this Court and the same was dismissed vide order dated 10.11.2017 since then no progress has been made before the learned trial Court and examination-in-chief of only one witness namely Ibrahim Aziz was recorded on 15.09.2020 and further examination-in-chief was reserved at the request of learned A.D. (Law) on the ground that departure and arrival

entries of station diary are not available in the police file and matter was adjourned and again the matter was fixed on 29.03.2021 but once again learned SPP requested for time on the ground that complete case property was not available and matter was adjourned. He further contended that in the same case, co-accused namely Saqib Ashraf was also arrested alongwith present applicant/accused and he confessed his guilt voluntarily and he was convicted and sentenced RI for 04 years and pay fine of Rs.50,000/- in case of default of payment. He further contended that since his arrest the applicant/accused is in jail without any progress in the case and lastly prayed for grant of bail. In support of his contentions, he has relied upon the cases of (1) 2017 SCMR 1194 (Imtiaz Ahmed v. The State through Special Prosecutor ANF), (2) 2019 YLR Note 68 (Amar Khan v. The State), (3) 2018 YLR Note 149 (Akhtar Zaman v. The State), (4) 2018 PCRLJ Note 123 (Muhammad Idrees v. The State), (5) 2018 PCRLJ Note 124 (Abdul Haq alias Mulla and others v. The State), (6) 2018 PCRLJ Note 118 (Sabir Khan v. The State), (7) 2017 PCRLJ 1661 (Riaz ur Rehman v. The State), (8) 2017 MLD 1376 [Peshawar] (Sifat Ullah v. The State), (9) 2002 PCRLJ 186 [Karachi] (Anwar Ali and another v. The State) and (10) 2001 YLR 743 [Karachi] (Iqbal v. The State).

4. On the other hand, learned Special Prosecutor ANF has vehemently opposed for grant of bail on the ground that a huge quantity of 3600 grams heroin powder was recovered while the applicant/accused was sitting on the driver seat of the vehicle and his pointation further 900 grams heroin powder was recovered from the flat of the applicant/accused as such he is not entitled for grant of bail.

5. Arguments heard and record perused

6. Perusal of the record would reveal that 3600 grams heroin powder on the pointation of both accused person was recovered from the rear seat of the vehicle and on subsequent information, I.O also recovered 900 grams heroin powder from the flat of the applicant. Before that, the concession of

post-arrest bail to the applicant/accused in the above case was turned down on merit and now in the present round, the applicant/accused has sought his release on bail only on the ground of delay in conclusion of the trial. Hence, a progress report was called from the learned Special Judge-1 CNS, Karachi. The report shows that on 29.03.2021 examination-in-chief of PW Ibrahim Aziz complainant/I.O. was partially recorded and further examination-in-chief was reserved on the request of learned SPP for want of complete case property and the matter was adjourned to 27.04.2021. On 27.04.2021 neither PWs were present nor learned D/C and SPP for the State, therefore the matter was adjourned to 03.05.2021. On 03.05.2021 PWs and learned D/C for the accused was called absent therefore NBWs were ordered to be issued against PWs and the matter was adjourned to 17.05.2021. It is important to note here that the applicant/accused was arrested on 17.01.2017 and since then he is in jail and despite the best efforts made by the learned trial Court the prosecution has failed to produce its witnesses. It is admitted position that the applicant/accused is in jail for the last four years and four months but the prosecution failed to conclude his case. In the case of **Imtiaz Ahmed vs. The State through Special Prosecutor ANF (2017 SCMR 1194)**; wherein Hon'ble Supreme Court of Pakistan has held that speedy trial is the fundamental right of the accused being universally acknowledged. It is appropriate to reproduce the relevant para as under:-

“17..... To have a speedy trial, it is the fundamental right of accused being universally acknowledged. Under the Criminal Procedure Code, smooth methodology and scheme for speedy trial, is provided whether it is held by the Session Court or Magistrate, in recognition of the said right of an accused person. This principle shall apply more vigorously to the trials before Special Court, constituted under the CNS Act, or any other special law so that unnecessary delay, much less shocking one in its conclusion is avoided in all circumstances. Any unreasonable or shocking delay in the conclusion of the trial, before Special Courts, like we are confronted with in the present case, would amount to denial of justice, or to say, denial of fundamental rights, to the accused, of speedy trial.”

7. Furthermore, no material is available on record it could suggest that the applicant was previously convicted,

hardened, and desperate or involved in such like cases. In view of the above and the peculiar circumstances of the case, I have no other option but to extend the concession of post-arrest bail to the applicant/accused only on the ground of delay.

8. Consequently, the criminal bail application is allowed and the applicant/accused is admitted to post-arrest bail subject to furnishing his solvent surety in the sum of Rs.500,000/- (rupees five lacs only) and P.R. bond in the like amount to the satisfaction of the trial Court.

9. It is made clear that if the applicant/accused misuses the concession of bail, the learned trial Court would be at liberty to take appropriate action.

Kamran/PA

JUDGE