

IN THE HIGH COURT OF SINDH, AT KARACHI
Cr. Bail Application No. 680 of 2022

Applicant : Muhammad Azeem s/o Ali Muhammad,
through Mr. Mallag Assa Dashti, advocate.

Respondent : The State, through Ms. Abida Parveen
Channar, Special Prosecutor A.N.F

Date of hearing : 21.04.2022
Date of order : 21.04.2022

ORDER

ZAFAR AHMED RAJPUT, J:- Through instant Criminal Bail Application, applicant/accused Muhammad Azeem s/o. Ali Muhammad seeks post-arrest bail in Crime/F.I.R. No. 06 of 2020 registered at P.S. A.N.F. Clifton, Karachi under sections 6/9(c) of the Control of Narcotic Substances Act, 1997 (*the "Act"*). His first application for the same relief in Special Case No. 21 of 2020 was dismissed by the learned trial Court i.e. Special Court-II (C.N.S.) Karachi, vide order dated 26.03.2020, whereafter he filed second bail application viz. Cr. Bail Application No. 1290 of 2020 before this Court, which was dismissed as not pressed by this Court vide order dated 17.09.2020 with direction to the trial Court to conclude the trial within two months, after that he filed third bail application bearing No. 49 of 2022 in the aforesaid Special Case, which was also dismissed by the learned trial Court vide order dated 01.04.2022.

2. Brief facts of the prosecution case are that, on 10.02.2020 at about 1300 hrs., S.I Qamaruddin of P.S. ANF, Clifton lodged the aforesaid F.I.R. alleging therein that on receiving spy information that international smugglers Akhtar Ali s/o Amanullah and Farooq s/o Abdul Sattar, through their agents, namely, Mohammad Azeem (*present applicant*), Mohammad Younus and Shahbaz Ali Khan would smuggle huge quantity of narcotics from SAPT Karachi (*South Asia Pakistan Terminals, Karachi*) to Netherland in container No.UACU-4127650, he constituted a raiding party and reached SAPT Karachi where he first met with ANF staff posted there and then they went to ANF examination area at about 2040 hrs.

where the spy pointed out five persons, including applicant, Mohammad Younus, who on query disclosed themselves as the owners of the consignment lying in the container and 3rd person, namely, Shahbaz Ali Khan disclosed himself as exporter/owner of Evergreen Impex; the 4th person, namely, Shahzad Patel disclosed himself as the companion of Shahbaz Ali Khan, while 5th person, namely, Abdul Maroof disclosed himself as clearing agent of the consignment, who handed over the documents of the said container to complainant SI Qamaruddin, including original consignments note, photocopy of undertaking of Shahbaz Ali Khan addressed to the ANF, photocopy of commercial invoice of Evergreen Impex, photocopy of NIN/ FBR verification in the name of Evergreen Impex, two copies of Form-E and two copies of GD. When the seal of the container was removed, 199 cartons were found therein having quilts. Upon inquiry, applicant and co-accused Mohammad Younus admitted about the concealment of narcotics in the guarders of the container's floor, The container was turned down through crane and on the pointation of the applicant and co-accused Mohammad Younus the iron sheet was cut down and found 15 guarders; each guarder having four iron boxes which were opened through tools and recovered 42 iron boxes containing 45 K.Gs heroin in transparent polythene bags, and 18 iron boxes containing 33.030 K.Gs opium in packets wrapped in yellow adhesive tape. 199 cardboard cartons alongwith quilts were put back in the container and the container was sealed. Clearing agent Abdul Maroof and Shahzad Patel were bound down to appear at P.S. ANF, Clifton for recording of their statements, while applicant and co-accused Muhammad Younus and Shahbaz Ali Khan were arrested at the spot under memo of arrest and recovery and were brought at P.S. ANF, Clifton, where aforesaid F.I.R. was lodged.

3. Learned counsel for the applicant has contended that the applicant is innocent and has falsely been implicated in this case; that after framing of the charge, the trail Court examined four witnesses, including complainant

Qamaruddin two private witnesses, namely, Abdul Maroof and Shahzad Patel; however, they failed to brought on record any convincing evidence against the applicant to connect him with the commission of alleged offence; that the co-accused exporter Shahbaz Ali Khan has already been admitted to post-arrest bail by the trial Court vide order dated 11.03.2022 and the case of the present applicant is on better footings from the case of said co-accused; hence the applicant is also entitled to the bail on the ground of rule of consistency.

4. On the other hand, the learned Special Prosecutor A.N.F. has opposed this application on the ground that the applicant attempted to smuggle narcotics in huge quantity by concealing in container and the prosecution has sufficient evidence against him to connect with the commission of alleged offence.

5. Heard learned counsel for the parties and perused the material available on record with their assistance.

6. It appears that the applicant is confined in judicial custody since the day of his arrest i.e. 10.02.2020. ANF has submitted that challan before the trail Court; hence, the custody of the applicant is not required by them for further investigation. The applicant is one of the partners of M/s. Combined Logistic International, a freight forwarding company that supplies empty containers to their clients, who fill them with goods from their warehouses and export them internationally through their clearing agents. The applicant was neither the owner of the shipment or the exporter nor was the alleged container filled by him. It is also an admitted position that the alleged container was cleared by the customs authorities and nothing was found in that process. As per investigation, co-accused Muhammad Younus on the instructions of absconding accused Akhtar Ali and Farooq made planning to smuggle narcotics abroad by concealing in container and for that purpose he asked present applicant to arrange E-Form, who also arranged container which was taken to the farm of

absconding accused Farooq where the alleged narcotics were concealed in guarders of the container; hence, it is yet to be determined if the applicant had any conscious knowledge about the concealment of narcotics by the said co-accused in his alleged hired/booked container and if he is beneficiary of alleged consignment/shipment. As such, the guilt of the applicant calls for further inquiry as envisaged under section 497, Cr. P. C.

7. The present applicant, as per F.I.R., is a forwarder who facilitated the export of goods to Nederland by arranging alleged container. The I.O. has taken into his possession the documents pertaining to exports of goods including UNDERTAKEING of the exporter co-accused Shahbaz Ali Khan to the effect that the subject goods were free from any narcotics/contraband items and in case the same were found, he would be fully responsible. It is an admitted position that said co-accused Shahbaz Ali Khan (*exporter of consignment*) has been admitted to post-arrest bail by the trial Court considering his case as that of further inquiry on account of cross-examination of the complainant wherein he admitted that the said co-accused has no concern with the recovered narcotics, who has also admitted in cross-examination that he has not produced any documentary evidence connecting the applicant with the container; The case of the present applicant; therefore, appears to be at par with the said co-accused; hence, the principle of consistency also applies in the case of the applicant, which demand equal treatment with the applicant.

8. Accordingly, the instant application is allowed and in result thereof the applicant is admitted to post-arrest bail in aforesaid crime/offence subject to furnishing by him solvent surety in the sum of Rs. 3,00,000/- (*Rupees Three Lacs only*) and P.R. Bond in the like amount to the satisfaction of the trial Court.

Above are the reasons of my short order dated 21.04.2022.

JUDGE