

IN THE HIGH COURT OF SINDH AT KARACHI

CR. BAIL APPLICATION NO.1079/2021

Applicant : Mukhtiar Ahmed Nizamani,
through Mr. Umair Bachani, advocate.

Respondent : The state,
through Mrs. Firdous Naseem, Special
Prosecutor, Customs.

Date of hearing : 25.06.2021

Date of order : 25.06.2021

ORDER

SALAHUDDIN PANHWAR, J. Precisely, relevant facts are that on 12.05.2021 complainant/Preventive Officer of Customs intercepted a passenger namely Mohammed Ahmed Nizamani (present applicant) who was leaving for USA by Emirates' flight No.EK-607; during examination of his baggage recovered 5530 injections of Burpregestic (Buprenorphine) each injection containing 01 ml **Buprenorphine** hence following formalities FIR was lodged.

2. Learned counsel for applicant, *inter alia*, contends that applicant is an old aged person having history of depression hence he was carrying injections as prescribed by doctor. It is further contended that description given in the FIR that such injections were containing **buprenorphine** is contrary to the fact hence in any way offence is not falling under narcotics.

3. In contra learned Special Prosecutor, Customs contends that quantity of injections is huge and one part of that injection relates to narcotics therefore applicant is not entitled for bail.

4. I/O present contends that applicant having mental ailment and applicant claims that as per doctor's advice he was carrying the injections; applicant is a US national as well as Pakistan National. description of property admittedly is injection branded by a company containing small portion of drug which falls within schedule of narcotics, however I/O contends that they are not capable to extract narcotics from that injection and weigh separately therefore they are not clear on the actual measurement of the narcotics. Besides, he contends that such medicine is used to treat an addict person.

5. *Prima facie*, the status of the recovered articles is that of a '**medicine**' which, too, of a *pharmaceutical* company and was / is used for the treatment with which the applicant / accused *admittedly* suffers and I.O admits that they are not capable of *decryption* process for separating the alleged *prohibited* ingredient thereof hence not in a position to give exact weight of **prohibited article**. This makes the case open to further probe regarding applicability of proper subsection which, *otherwise*, is dependent *purely* upon weightage / quantity.

6. Further, needless to add a National of USA shall include *long stay* which (long stay) would require use of *prescribed* injections. This, *floating fact*, attaches weight to the plea of the applicant / accused that these injections were for personal use. This makes the '**conscious knowledge**' , necessary to exist for applicability of applied sections, open to further probe. The bail in such like cases to be granted. Reference is made to the case of Naseem Ullah & Ors v. State (2020 SCMR 356) wherein it is observed as:-

“2. The question whether the petitioners had the conscious knowledge or possession of the recovered narcotic substance shall be determined at the time of trial...”

Be that as it may, it is also admitted position that applicant / accused also possesses the prescription for which the **medicine/ injection** is used and is also National of the USA where he was travelling to; hence this also makes room to further probe that whether these **injections** were / are meant for personal use or for sale in USA?. I would add that even if it is believed that such **injections** were meant for sale yet applicability of applied sections, meant for **possessing narcotics**, would *still* make the case one of further probe.

7. The prosecution claims that the each **injection** 01 ml **Buprenorphine** therefore, it was obligatory upon the prosecution to, *prima facie*, establish that such ‘**drug**’ falls within meaning of **Schedule** (Section 2(z)), titled as **Psychotropic substances**’ because every drug is not **Psychotropic substances** but only those which satisfy the meaning, as provided by Section 2(z) of the Act which reads as:-

“**Psychotropic substances**” means the substances, specified in the Schedule to this Act and such substances as the Federal Government may, by notification in the official Gazette, declare to be a *Psychotropic substances*”.

This aspect also makes the case open to further probe as this aspect, too, could only be established at the time of trial, *particularly*, when the prosecution has not produced any such *official Gazette* whereby the said **drug** has been declared to be falling within meaning of **Psychotropic substances**.

8. Since, the accumulative effect of above discussion makes it quite clear that the case against the applicant / accused falls within meaning of **further probe** therefore, applicant / accused, whose custody is not being claimed for any purpose of investigation, has succeeded in making out a case for Bail. These are the reasons for the short order dated 25.6.2021 whereby the applicant / accused was admitted to post-arrest bail.

J U D G E

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