

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Bail Application No. 584 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGES
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For hearing of bail application.

20-05-2022

Mr. Iftikhar Ali Larik, Advocate for applicant.

Mr. Shamsheer Khan holds brief for Ms. Abida Parveen Channer, Spl.
Prosecutor, ANF.

PI Muhammad Hassan Koharo, P.S. ANF Clifton, Karachi, I.O. of the case
present.

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Omar Sial, J: Sultan Aziz has sought post arrest bail in crime number 22 of 2019 registered under sections 6 and 9(c) of the CNS Act, 1997 at the ANF Clifton police station in Karachi. Earlier, his application seeking bail was dismissed on 21.3.2022 by the learned Special Court No.2, CNS, Karachi.

2. A background to the case is that the aforementioned F.I.R. was registered on 9-4-2019 on the complainant of S.I.P. Muhammad Hassan Koharo. Complainant recorded that during passenger checking at the ANF counter in the Jinnah International Airport Terminal a man by the name of Zaroof was intending to travel to Birmingham via Dubai through flight No.LEK-601 of Emirates Airline. During checking from the luggage of Zaroof 18.785 kgs heroin was recovered. Zaroof was taken into custody.

3. The complainant has explained to me that the role of the current applicant was confined to picking up Zaroof from a hotel in Karachi and dropping him at the Jinnah International Airport Terminal. Complainant has further explained to me that apart from the CCTV footage which shows this movement the other piece of evidence is that the applicant along with Zaroof and one other had purchased their air tickets all at the same time. There is no other evidence against him as yet.

4. I have heard the learned counsel for the applicant, however inspite of giving several opportunities to ANF none appeared on its behalf except the complainant and in spite of clear directions on the previous date to proceed with the case, a request for an adjournment was made even today.

5. A heavy quantity of narcotics was discovered in the luggage of Zaroof however the level of ANF's investigation and prosecution leaves a lot to be desired. It appears that no effective efforts were taken to discover the origins of the heroin or to bring to task the actual mastermind of this smuggling attempt. Until and unless the masterminds of the drug trade are brought to justice, the poverty of the drug mules will continue to be used by the drug barons. Only the names of such mules will keep changing.

6. It is stated in the F.I.R. that the narcotics was recovered from Zaroof's luggage which was in his sole possession. Mere fact that applicant picked up Zaroof from a hotel and dropped him at Jinnah International Airport Terminal and that the 3 people purchased tickets together is not sufficient to deny bail to the applicant. Apart from CCTV footage and purchasing of tickets there appears to be no other evidence which prima facie shows that applicant shared a common intention with Zaroof or that he was the person who had supplied drugs to Zaroof.

7. I also have in mind the wisdom of the Honorable Supreme Court in the case of **Chairman, NAB through PG, NAB vs Nisar Ahmed Pathan and others** (in Civil Petitions No. 1628 of 2020, still unreported) that: "Where two opinions can reasonably be formed on the basis of the same material, the courts should prefer and act upon that which favours the accused person and actualizes his fundamental rights to liberty, dignity, fair trial and protection against arbitrary detention. To err in granting bail is better than to err in declining; for the ultimate conviction and sentence of a guilty person can repair the wrong caused by a mistaken relief of bail, but no satisfactory reparation can be offered to an innocent person on his acquittal for his unjustified imprisonment during the trial."

8. In view of the above observations, the applicant is admitted to post arrest bail subject to his furnishing a solvent surety in the amount of Rs. one million and a P.R. bond in the like amount to the satisfaction of the learned trial court.

JUDGE