

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Bail Appln. No. S – 200 of 2023.

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

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Mr.Nazir Ahmed Junejo Advocate for applicant.
Mr.Shafi Muhammad Mahar DPG.

Date of Hearing: 05.06.2023

Date of order: 08.06.2023

ORDER.

AMJAD ALI BOHIO, J:- The applicant has filed this bail application after their previous application was dismissed on 21.03.2023, as per the order in Special Case No. 95/2022, Crime No. 108 of 2021 at Police Station Tando Masti Khan, District Khairpur. The applicant is charged with an offense under Section 9(c) of the CNS Act, 1997.

2. The prosecution case, as stated in the FIR, involves a police party led by SIP Taj Muhammad Shar. While on patrol, they received intelligence information about the transportation of Opium in an Oil Tanker. Acting upon this information, the police party apprehended the applicant, who was found seated with Taza Gul, the son of driver Nawab Khan, and Saleem Khan, the son of Noor Khan. In the presence of mashirs, the police party discovered and seized small and large quantities of Opium weighing a total of 15 kilograms from the cabin of the Oil Tanker, which bears the registration number TMH 793. Consequently, an immediate FIR was registered.

3. The learned counsel for the applicant has argued that the applicant was merely a passenger in the aforementioned Oil Tanker and had no knowledge of the presence of contraband material in the cabin. Furthermore, the applicant had no direct involvement in the alleged recovery. It is highlighted that the driver of the Tanker, who was arrested and has been in custody since October 2021, does not support the case

against the applicant. Additionally, there is no indication of an imminent trial. The counsel concludes by requesting the grant of bail. To support these arguments, the counsel cited several cases, including Javed v The State (2017 S C M R 531), Khan Zeb v The State through Special Prosecutor, A.N.F (2020 S C M R 444), Gul Manan v The State (2021 S C M R 1804), Mosa Khan v The State (2022 P L R 605), Farhad Ali v The State (2022 SC M R 685), and Mosa Khan v The State (2023 Y L R 363).

4. On the other hand, the learned Deputy Prosecutor General (DPG) representing the State has opposed the bail application and argued that the accused was apprehended at the scene while sitting with the Tanker's driver. Therefore, according to the DPG, the accused is not entitled to bail. The DPG relied upon the cases of Muhammad Yousaf and another vs. The State (2022 SCMR 840), Abdul Aziz vs. Abdul Hameed (Deceased) through L.Rs (2022 SCMR 842) and Gull Din vs. The State through P.G Punjab and another (2023 SCMR 306).

5. It is acknowledged that the challan has been submitted, and the accused is no longer required for investigation. All the witnesses are police officials. The allegations against the accused are that they were found sitting in the Oil Tanker where the opium was recovered from the cabin. The question of whether the petitioner, who was not the driver of the vehicle, had conscious knowledge of the narcotics in the cabin requires careful consideration. However, such consideration is not warranted by law at the bail stage, as only a tentative assessment of the available record can be made. There is nothing in the case file to indicate that the applicant had even the slightest conscious knowledge of the recovered contraband in the vehicle to establish a nexus with the foiled attempt of opium transportation. Since there is no clear evidence or material connecting the applicant to the main accused, and nothing was recovered from the applicant or based on their statement, the counsel for the applicant rightly relied on the case of 2021 S C M R 1804, which reveals as under :-

“2. After hearing the learned counsel for the petitioner and learned counsel appearing on behalf of State at length and perusal of available record, it has been observed by us that it has not been disputed that when the vehicle was stopped by the police, the petitioner was merely sitting in the vehicle and he was not driving the said vehicle. Narcotics were

allegedly recovered from the secret cavities of the vehicle. Learned counsel appearing on behalf of State after going through the file confirms that there is no connection of the petitioner with the said vehicle and even nothing was recovered from his personal possession or on his pointation. He, however, contends that petitioner was in the vehicle and in the circumstances it can be safely presumed that he had conscious knowledge of the narcotics concealed in that vehicle. and even he attempted to run away from the spot, when the police signaled the vehicle to stop. The question, the petitioner who was not a driver of the vehicle had conscious knowledge of narcotics concealed in the vehicle needs serious consideration, which shall be determined by the learned trial Court after recording evidence. In the circumstances, case against the petitioner calls for further inquiry falling within the ambit of section 497(2), Code of Criminal Procedure.”

6. The facts of aforementioned case law relied upon by learned DPG are distinguishable from the facts of above case in hand.

7. Accordingly, when the applicant/ accused was found sitting in the vehicle, and during the investigation, no evidence is established regarding his connection or relationship with the driver of the vehicle carrying contraband, further inquiry is required, as held in the case of Khan Zeb vs. The State through Special Proscutor (2020 S C M R 444).

8. Based on the above, the instant bail application is hereby granted to the applicant, Awal Khan, upon furnishing a solvent surety in the amount of Rs. 200,000/- (Two hundred thousand rupees) only, and a personal recognizance (PR) bond in a similar amount.

JUDGE