

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No. 731 of 2024
(*Aamir Ali Khan v. The State*)

Date	Order with signature of Judges
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For hearing of bail application

15.05.2024

Mr. Mudassir Khan Abbasi, advocate for the applicant
Mr. Irshad Ali, Assistant Attorney General

It is the case of the prosecution that the applicant with the rest of the culprits smuggled 411 kilograms of methamphetamine and 100 kilograms of cocaine under the garb of export of onions to Malaysia; on its seizure in Malaysia, the present case was registered with PS Customs Karachi.

The applicant having been refused post-arrest bail by the learned Judge, Special Court-II (CNS) Karachi has sought the same from this Court by way of instant bail application u/s 497 Cr.P.C.

It is contended by learned counsel for the applicant that the applicant is a forwarding agent who had nothing to do with the contraband substance so smuggled; the recovery is made in Malaysia; there is no independent witness to the incident; co-accused Taha Hussain has already been admitted to bail by learned trial Court and the applicant is in custody since six months, therefore, he is entitled to be released on bail on point of further inquiry. In support of his contention, he relied upon the case of *Fahad Hussain and others v. the State* (2023 SCMR 364).

The learned Assistant Attorney General has opposed to release of the applicant on bail by contending that the applicant is vicariously liable for the commission of the incident and the offence allegedly committed by him has earned a bad name for the country. In support of his contention, he relied upon the case of *The State/ANF v. Aleem Haider* (2015 S C M R 133).

Heard arguments and perused the record.

Admittedly, the applicant is a clearing/forwarding agent; it was he who forwarded the consignment destined for Malaysia; it contained a huge quantity of narcotics substance under the deception that it was onions; it was recovered in Malaysia; such an act earned a bad name for the country. In that situation, it would be premature to say that the applicant being innocent has been involved in the case falsely by the customs officials. The applicant had failed to discharge his obligation by ensuring that no Narcotics Substance was lying in the consignment to be forwarded by him, which constitutes an act of vicarious liability on his part. Of course, there is no independent witness to the incident but for this reason, the customs officials could not be disbelieved by this court at this stage, they were having no ill-will or malafide with the applicant to have involved him in this case falsely. The custody of the applicant for a few months is not enough to make him entitled to be released on bail in a case like the present one which entails the death penalty and/or imprisonment for life with a fine. The case of the applicant is distinguishable from that of co-

accused Muhammad Taha as initially he was made a witness and then was made an accused. A deeper appreciation of the facts and circumstances even otherwise is not permissible at the bail stage. There appear reasonable grounds to believe that the applicant is guilty of the offence, with which he is charged; thus, no case for his release on bail on point of further inquiry is made out.

The case law which is relied upon by learned counsel for the applicant is on distinguishable facts and circumstances. It relates to the admission of the applicant to bail in a murder case.

Consequent to the above discussion, the instant Crl. Bail Application is dismissed.

J U D G E