

THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 936 of 2024

[Abdul Wahid & others v. the State]

Applicants : (i) Abdul Wahid son of Muhammad Yousuf
(ii) Mohammad Hanif son of Shareef
(iii) Kamran Akbar son of Muhammad Akbar
through Mr. Jam Shahid Iqbal Advocate.

Respondent : The State, through Mr. Mujtaba Saheto, Special Prosecutor, Ms. Alizeh Bashir, Assistant Attorney General for Pakistan

Date of hearing : 21-08-2024

Date of decision : 21-08-2024

*FIR No. ASO-439/2023-HQ
u/s: 6, 7 & 8 r/w sections 14 & 15 of the
Control of Narcotic Substances Act, 1997,
punishable u/s 9(1)(d) ibid.
P.S. ASO (HQ) NMB, Wharf, Karachi*

ORDER

Adnan Iqbal Chaudhry J. - The Applicants/Accused seek post-arrest bail in the aforesaid crime after the same has been declined by the trial court by order dated 06.04.2024.

2. As per the FIR dated 28.10.2023, on a tip-off, a passenger bus entering Karachi from Gwadar was stopped for checking at *Mochko* check-post; that a search revealed an engineered space within the roof of the bus, from which was recovered 62 plastic boxes wrapped in blue polythene, and 40 other black polythene packets; that the 62 plastic boxes contained 'green color buds', suspected to be 'Marijuana/Ganja/Cannabis', with a net weight of 14.85 kg; that 10 grams from each box was taken as a sample for chemical examination, and the remainder sealed; that the Applicant No.1 was arrested as he was driving the bus, and the Applicants 2 and 3, who were cleaners of the bus, were arrested as accomplices; all booked for offences under sections 6 to 8 of the Control of Narcotics

Substances Act, 1997, punishable as prescribed at serial 1(d) of Table 1 of section 9 of the CNS Act, 1997 for a term which may extend to imprisonment for life, but not less than 14 years, plus fine.

3. As regards the other 40 black polythene packets, those were found to contain *Boostin* injections, allegedly banned for import into Pakistan, and therefore the FIR also alleged the offence of smuggling under section 2(s) of the Customs Act, 1969. For that offence, the Applicants were granted bail by this Bench by order dated 12.03.2024 passed on Spl. Criminal Bail Application No. 14/2024.

4. Heard learned counsel and perused the record.

5. The report of the Chemical Examiner placed on the record by the Prosecutor identifies the samples as “weeds”, whereas the challan classifies the offence under serial 1 of Table 1 of section 9 of the CNS Act, which relates to ‘*bhang*’. Per the prosecution, ‘*weed*’ is another name for ‘*cannabis*’, which in turn includes ‘*bhang*’ as per the definition in section 2(d)(ii) of the Act. However, the Prosecutor concedes that given the net weight of the quantity allegedly seized, the offence would not be punishable under serial 1(d), but under serial 1(c) of Table 1, where the maximum imprisonment prescribed is 14 years, not less than 7 years. Therefore, the case does not fall within the prohibitory clause of section 51 of the CNS Act.

6. The narcotic was admittedly recovered from a secret space within the roof of a bus carrying passengers, which space was accessible from the inside of the bus. It was not recovered from the person of the Applicants or from a place which could be undeniably within their knowledge. Learned Prosecutor submits that given the nature of the secret space and the quantity of the narcotic, it could not have been stashed there by a passenger on the bus. But then, the Applicants too were only hired hands for the bus, the Applicant No.1 as driver, and the Applicants 2 and 3 as cleaners. The *ratio* of the cases of *Muhammad Noor v. The State* (2020 SCMR 927) and *Nazeem Ullah v. The State* (2020 SCMR 356) is that ‘possession’ under section 6 of the CNS Act connotes a conscious possession. Therefore,

it has yet to be seen whether the Applicants were conscious of the narcotic concealed in the bus. Till such time, the extra-judicial statements of the Applicants cannot be used against them.

7. Given the aforesaid, the case against the Applicants requires evidence into their guilt. In the meanwhile, their custody is no longer required for investigation.

8. In view of the foregoing, the Applicants have a fit case for bail under sub-section (2) of section 51 of the CNS Act. Therefore, bail is granted to Abdul Wahid, Mohammad Hanif and Kamran Akbar in FIR No. ASO-439/2023-HQ subject to furnishing solvent surety in the sum of Rs.200,000/- [Rupees Two Hundred Thousand only] each alongwith P.R. Bond in the like amount to the satisfaction of the trial Court.

Needless to state that observations herein are tentative, and nothing herein shall be construed to prejudice the case of either side at trial.

JUDGE

Karachi
Dated: 21-08-2024

*PA/SADAM