

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Bail Application No.2017 of 2024

(*Syed Zia Hussain Shah vs The State*)

Date

Order with signature of Judge

**Before:-**

Salahuddin Panhwar J.

Adnan-ul-Karim Memon J.

For hearing of bail application

**Date of hearing and order: 17.10.2024**

M/s Zain Jatoi and Mustafa Mamdani advocate for the applicant.  
Mr. Riaz Muhammad Shah DAG along with Mir Mehran Khan  
IO/SI FIA SBC Karachi.  
Mr. Jan Muhammad Khuhro AAG.

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**ORDER**

**Adnan-ul-Karim Memon, J.** – Syed Zia Hussain Shah has filed a bail application under Section 497 for seeking post-arrest bail in FIR No.22/2024, registered under Sections 23 & 27 of the Drugs Act 1976 read with sections 34 and 109 PPC at Police Station State Bank Circle, FIA Karachi. The earlier bail plea of the applicant has been declined by the Drug Court of Sindh at Karachi vide order dated 21.8.2024 on the premise that the evidence strongly suggests the applicant's involvement in the manufacturing of counterfeit drugs, which is a serious offense with potential health consequences.

2. The prosecution case is that on July 26, 2024, a joint FIA-DRAP team raided an unregistered drug manufacturing facility operating out of Ashra-e-Mubashira Masjid in Karachi. Five suspects were arrested and charged with illegally manufacturing and selling fake and spurious drugs. The team seized drugs, equipment i.e. fake/unregistered/spurious Drugs/Pharma, and Pharmaceutical manufacturing Machinery, and the stock on Form-2 and samples for analysis. After receiving permission from the Director DRAP Islamabad arrested the applicant and registered the FIR against the applicant and his accomplices. During the Investigation, the Investigation Officer recovered two aluminum foils of tablets, namely Tegral & Cefixime carrying 25 kg each. The applicant failed to justify the legal capacity to carry such material.

3. Learned counsel for the applicant argues that applicant is innocent and falsely implicated; that no drugs or pharmaceutical ingredients were recovered; and that mere recovery of aluminum foils is not an offense. Applicant not involved in import, export, manufacture, or distribution of drugs; that circumstantial evidence does not prove direct involvement of the applicant. He added that the applicant unaware of the counterfeit nature of materials if any. He has contended that none of the allegations against him fall within the mischief either of Section 23 or of Section 27 of the Drugs Act; that no drug whatsoever unregistered, spurious, or fake or for that matter any pharmaceutical ingredient thereof having not even alleged to have been recovered from the accused applicant and the case against him is not covered by any of the penal provisions of the Drugs Act. He next contended that the absence of any drugs as defined in the law, is not an offense alleged to have been contravened by the applicant. He next contended that the applicant is not involved in any of the unlawful activities as enumerated in Sections 23 and 27 of the Drugs Act. He emphasized that the recovered materials are circumstantial evidence, and might not definitively proved the applicant's direct involvement in manufacturing; and that the applicant was/is unaware of the counterfeit nature of the materials, if any, as portrayed by the prosecution. Learned counsel emphasized that the prohibitions contained in Section 23 of the Drugs Act, 1976 are liable to punishment with penalties as detailed in Section 27 thereof and the maximum sentence being 7 years or with a fine brings the case of the prosecution outside the ambit of prohibitory clause of Section 497, Cr.P.C.as such the present detention of the applicant is nothing but a pretrial punishment which is against the spirit of law. In support of his contention he relied upon the cases of Saeedullah v The State 2007 YLR 362, Muhammad Nadeem v The State 2018 SCMR 881, Arshad Nadeem and 2 others v The State 2020 P Cr. L J 657, The State v Imam Bux & others 2018 SCMR 2039, Jamal-Ud-Din alias Zubair Khan v The State 2012 SCMR 573 and Iftikhar Ahmed v The State PLD 2021 Supreme Court 799. He lastly prayed for allowing the bail application.

4. Learned DAG assisted by Inspector FIA SBC Karachi has opposed the grant of bail to the applicant on the ground that Applicant Zia Hussain Shah was found in possession of materials used to manufacture counterfeit drugs, including Tegral and Cefixime. He added that the applicant's actions contravene Section 26 of the Drugs Act, which prohibits printing labels without a license; that the recovered materials directly link the applicant to the manufacturing of counterfeit drugs, making him a potential accomplice; that under Section 34 of the Drugs Act, the applicant is liable to be held, even if he does not directly manufacture the drugs; that the search and seizure procedures are lawful, and the applicant's submissions regarding non-compliance with Section 103 Cr.P.C. are of procedural and were rightly discarded by the trial court; that the official witnesses were/are considered credible unless proven otherwise; that manufacturing counterfeit drugs poses a significant health risk to the public and is considered a serious offense. He submitted that only the interim challan was filed on August 10, 2024, before the trial court and it is too early to consider bail of the applicant at this stage. The applicant can file for bail after the final challan is submitted to the trial court on fresh ground. He prayed for the dismissal of the bail application.

5. We have tentatively assessed the record and law on the subject, the applicant has been charged under section 23 and 27 of the Act, these provisions prohibit the sale of drugs that are not registered or are presented in a form that misleads the public. The applicant is also accused of illegally manufacturing spurious and unregistered drug products in connivance with his accomplices, in this regard, FIA recovered two aluminum foils of tablets (Tegral and Cefixime) and other materials used for manufacturing these drugs. The applicant is also accused of carrying aluminum foils in a Toyota Corolla Car and such drugs were seized and reported to be spurious and counterfeit. Besides no license has been placed on record for printing the labels or aluminum foils of such drugs. The provincial Drug Inspector seized the other materials viz Cylinder for printing Tegral, Aluminum foil for printing Tegral, aluminum foil for printing Cefixime FC tablet used for manufacturing Cefixime tablet, Cylinder for printing amoxicillin 500 mg, Cylinder for printing Cefixime tab. 01.

6. So far as the contention of the applicant that nothing was recovered from the applicant in contravention of the aforesaid provisions, suffice it to say that the seizer memo, prima facie shows that the co-accused Abdul Wahab revealed that the aluminum foil used for packaging the spurious medicine was supplied by applicant Syed Zia Hussain Shah. However, the applicant was not able to provide any legal justification and on the contrary, admitted to printing the foils without authorization/license. In such a situation, Section 23 of the Drugs Act deals with the sale of unregistered drugs. It carries a potential sentence of up to 10 years under Section 27(1)(a). This makes it a serious offense against public health. While Section 27(2) allows for shorter sentences, selling counterfeit drugs remains a harmful act with severe consequences. Section 26 of the Drugs Act prohibits printing labels without a license. The recovered materials prima facie suggest the applicant's involvement in manufacturing counterfeit drugs, making him a potential accomplice.

7. About the statement of co-accused and subsequent arrest of the applicant leading to the recovery of incriminating material in terms of seizer memo as discussed supra, no doubt, as per Article 43 of the Qanun-e-Shahadat Order, 1984 when more persons than one are being jointly tried for the same offense and a confession made by one of such persons admitting that the offense was committed by them jointly, is proved, the court may take into consideration the confessional statement of that co-accused as circumstantial evidence against the other co-accused (s). However, the statement of one accused can be relied upon if there is some other independent evidence corroborating such a confessional statement. The principle ingrained in Article 43 of the Qanun-e-Shahadat is also applied at the bail stage and the confessional statement of an accused can lead the court to form a tentative view about prima facie involvement of his co-accused in the commission of the alleged offence. On the aforesaid proposition, we are guided by the decision of the Supreme Court in the case of Muhammad Sarfraz Ansari vs. The State and others (PLD 2021 SC 738 ).

8. The applicant was arrested red-handed with a considerable quantity of incriminating material as discussed in the preceding paragraphs. No plausible explanation was offered, and the recovery memo was supported by witnesses. The court below found sufficient incriminating material to connect the applicant with the alleged offense. The offense alleged against the applicant is punishable by imprisonment up to ten years and thus falls within the prohibitory clause of Section 497(1) CrPC. In such circumstances, the applicant failed to make a case for further inquiry or bail under Section 497(2) CrPC. On the aforesaid proposition, we are guided by the decision of the Supreme Court in the case of *Mst Fursan vs. the State* (2022 SCMR 1950). The case law cited by the learned counsel for the applicant is of no help to him at this stage due to reasons discussed supra.

9. In view of the above factual and legal position, the applicant is not found entitled to the relief of bail. We therefore dismiss the bail application. However, the learned trial court is directed to proceed with and conclude the trial expeditiously within two months and if the charge is not framed the same shall be framed on the date so fixed by the trial court after completing the codal formalities, leaving the applicant to apply for fresh bail on the fresh ground if available to the applicant.

10. The observation recorded above is tentative, and shall not prejudice the trial court.

JUDGE

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