

THE HIGH COURT OF SINDH KARACHI

Present:
Justice Jawad Akbar Sarwana

Criminal Bail Application No. 2622 of 2024

For hearing of Bail Application.

Applicants/ Accused : Aryan Afridi son of Yaqoot Khan through Mr. Mallag Assa Dashti, Advocate.

Complainant/State : Through Mr Haad A.M. Baggawala, Special Prosecutor ANF & I.O. SIP Muhammad Muzammil of ANF

Date of hearing : 19.12.2024

Date of Order : 18.02.2025

*FIR No. 32/2022
U/s: 6/9(1) 3(d), 6(f),
14 & 15 of CNSA (Amended), Act 2022
P.S. A.N.F-Gulshan-e-Iqbal,
Karachi.*

ORDER

Jawad Akbar Sarwana J. - The applicant/accused, Aryan Afridi s/o Yaqoot Khan, seeks post-arrest bail in the crime arising out of FIR No.32/2022 under the above-mentioned sections registered at PS ANF, Gulshan-e-Iqbal Karachi, after the same was declined by the learned Special Judge-III (CNS) Karachi by order dated 07.11.2024 in Special Case No.02/2024 (Old Case No.141 of 2022), The State v. S.M.Afham & Others.

2. Per the above FIR, the narcotics found on the spot on 08.11.2022 at about 00:30 hours near the Pedestrian Overhead Bridge, Al-Asif Square, Super Highway, Karachi, from the three (3) accused was from:

- (i) Muhammad Afham Shaikh, 115 charas capsules weighing 1200 gram (gross);
- (ii) Shamim Khan 144 charas capsules weighing 1600 grams (gross) PLUS three (3) packets of charas each weighing 1200 grams (gross) total 3.6 kgs (gross); and,
- (iii) Abdul Jamil Khalil 428 heroine capsules weighing 3.090 Kgs. (net).

3. On 05.09.2024, in the Judgment of even date in Special Case No.02/2024 (Old Case No.141 of 2022), The State v. S.M.Afham & Others the three accused in FIR No.32/2022, namely, Muhammad Afham Shaikh, Shamim Khan and Abdul Jamil Khalil, were all convicted under Section 6/9 (1) 3(d), 6(f), 14 and 15 of CNS 1997 for possessing and transporting narcotics. Keeping in view the quantity of recovered narcotics and none not previously convicted, they were sentenced as the case may be ten (10) / fourteen (14) years imprisonment, as per the said Judgment dated 05.09.2024. Out of the three convicted felons, Shamim Khan filed Criminal Appeal No.656/2024 in the High Court of Sindh at Karachi, which is still pending hearing when this bail application was heard. All three convicts, at present, are serving their sentences in jail.

4. It is pertinent to note that in the above judgment, the applicant/accused, described as "**Aryaan Afridi @ Majid Afridi s/o Yaqoot Khan**" was declared a proclaimed offender vide Order dated 14.06.2023 and his case was kept on dormant file until his arrest.

5. Following the Judgment dated 05.09.2024, when Aryan Afridi's CNIC was blocked, and a perpetual warrant against the said absconding accused/applicant was confirmed, he proceeded to obtain protective bail from this Court and appeared before the New I.O. On 10.10.2024, the New I.O. prepared an interim challan, and Aryan Afridi subsequently appeared before the New I.O. However, the I.O. called for the cancellation of pre-arrest bail to continue the investigation, which bail was recalled, and the accused/applicant was arrested and sent to jail. The appellant/accused filed the post arrest bail application in Special Case No.02/2024 (Old Case No.141 of 2022), The State v. S.M.Afham & Others, but the same was rejected vide impugned order dated 07.11.2024.

6. As per the prosecution case, the absconder, Aryan Afridi, is the main supplier of narcotics, whose name kept popping up during the investigation by the Old I.O. and during the trial of the three convicted felons in Special Case No.02 of 2024 (Old Case No.141 of 2022).

Aryan Afridi's follow-up October 2024 and onward investigation by the New I.O.

7. As per the prosecution, the Old I.O., during his supplement challan in 2022, and in the investigation following, identified the applicant/accused, Aryan Afridi, as the alleged supplier in the crime based on several grounds which were recorded during the trial (between 2022 and September 2024).

(a) Aryan Afridi connection / nexus with convicted felons

8. As per the prosecution, the Old I.O., and as recorded in the Judgment dated 05.09.2024, the convicted Abdul Jail Khalil brought the narcotics from Peshawar, which was allegedly forwarded to the absconder accused/applicant for further supply to a foreign country through the convicted carrier, Muhammad Afham Shaikh. A relevant extract from the evidence of the Old I.O. is reproduced hereunder:

“The accused Abdul Jamil Khalil alongwith **Majid @ Aryan Afridi** residence of Shahkus Road Bara, District Khyber KPK through accused Shamim Khan had been smuggling the narcotics to the foreign countries. **Majid @ Aryan Afridi** on the guarantee and responsibility of accused Abdul Jamil Khalil had been sending narcotics to Karachi through his various carriers, which were used to be received by Shamim Khan and he through various international carriers used to send to different foreign countries. During the investigation, accused Abdul Jamil Khalil further disclosed that the recovered narcotics were sent by **Majid @ Aryan Afridi** which were received by him and accused Shamim Khan outside City Railway Station Karachi which have to be smuggled by Shamim Khan through his carriers Muhammad Afham and others.”

(b) Aryan Afridi and his business transactions with convicted felons

9. The Prosecution contended that according to the Old I.O., Aryan Afridi was the supplier maintaining several bank accounts involving multiple debit/credit entries in the Statement of Accounts between Aryan Afridi and his businesses and the convicted felons' bank accounts, as documented by the exchange of funds between the parties, inter se. The Old I.O. also tallied in evidence the phone number(s) of

Aryan Afridi disclosed by the convicted felons, which matched with Aryan Afridi's account opening form(s). These matters would have to be put to the accused/applicant, Aryan Afridi, by the New I.O., notwithstanding that it was an admitted position that the display picture of the applicant/accused, Aryan Afridi, in the mobile phones of the convicted felons matched with the bank's records, including the cross-referencing cheques as recorded in the Whatsapp messages. The Old I.O.'s unrebutted evidence in the trial case of the convicted felons was recorded as follows:

“ . . .During checking of bank record of above stated banks it confirmed that picture of absconder accused **Majid @ Aryan Afridi** which was obtained from WhatsApp record of arrested accused persons Shamim Khan and Abdul Jamil Khalil is same as CNIC copy /bio verysis of **Majid @ Aryan Afridi S/o Yaqoot Khan** as received from above stated banks along with account record of **Majid @ Aryan Afridi**. As well as phone numbers of **Majid @ Aryan Afridi** as revealed by arrested accused Shamim Khan and Abdul Jamil Khalil were also same as mentioned in the account opening form of **Majid @ Aryan Afridi** in above stated banks, which confirmed that the real particular of absconding accused of **Majid @ Aryan Afridi** are as **Aryan Afridi S/o Yaqoot Khan**, whose other address were also came from from such banks record. . .”

(c) *Aryan Afridi as main supplier associated with convicted felons*

10. Finally, as per the evidence of the Old I.O. recorded during the trial of the three felons, the three allegedly worked hand in glove with the absconder, Aryan Afridi, in the crime and to further the narcotics trade within Pakistan and abroad, including, the Kingdom of Saudi Arabia, the United Arab Emirates, Malaysia, Bangladesh, etc. working with Travel Agencies and putting up different business lines to further their crime and cover their trail, etc. A relevant extract from the evidence of the Old I.O. is reproduced hereunder, which materials, the prosecution contended, may be confronted to the accused/applicant, Aryan Afridi by the New I.O.:

“ . . .The accused Abdul Jamil Khalil alongwith **Majid @ Aryan Afridi** residence of Shahkus Road Bara, District Khyber KPK through accused Shamim Khan had been smuggling the narcotics to the foreign countries. **Majid @**

Aryan Afridi on the guarantee and responsibility of accused Abdul Jamil Khalil had been sending narcotics to Karachi through his various carriers, which were used to be received by Shamim Khan and he through various international carriers used to send to different foreign countries. During the investigation, accused Abdul Jamil Khalil further disclosed that the recovered narcotics were sent by **Majid @ Aryan Afridi** which were received by him and accused Shamim Khan outside City Railway Station Karachi which have to be smuggled by Shamim Khan through his carriers Muhammad Afham and others. Both these persons **Majid @ Aryan Afridi** and Shamim Khan had been paying huge amount to accused Abdul Jamil Khalil in this transportation smuggling of narcotics. . .”

“ . . . The arrested accused Shamim Khan, after admitting disclosures of accused persons Muhammad Afham and Abdul Jamil Khalil, further narrated that he used to prepare traveling documents of his carriers through the Waqas Muneer, Manager of “Dawood Bilal Travel Agency” and Farhan of “Three S Travel Agency”. The money earned and utilized in conducting business of narcotics sent by **Majid @ Aryan Afridi** to accused Shamim Khan but he instead of receiving such amounts in his own bank accounts, used to receive in bank accounts of his carriers, namely arrested accused Muhammad Afham Shaikh, Muhammad Ali, Manzoor Ahmed and Muhammad Ismail. He made a WhatsApp on the international number in which descriptions of the carriers, drug smugglers, detail of money transactions and related information were available therein. The mobile phones of the three accused persons were examined in the presence of witnesses, and linked between them was duly established alongwith the link with **Majid @ Aryan Afridi** and different carrier’s information from their WhatsApp messages, which further proved that the accused Shamim Khan had been receiving money in the accounts of different carriers sent by **Majid @ Aryan Afridi**. The entire relevant material obtained from their mobile phones was preserved in a USB by me and hard copies were also obtained. . . .”

11. Given the above facts and circumstances and the case's background, the learned Special Prosecutor submits that as the matter presently stands, the New I.O. is following up as to the alleged involvement of the applicant/accused, Aryan Afridi, as the alleged principal supplier, financier and main handler of the crime in FIR No.32/2022, specifically in the context of the Old I.O.’s investigation, the

findings pertaining to the three (3) convicted felons as recorded in the Judgment dated 05.09.2024, viz. the applicant/accused Aryan Afridi, as well as the applicant/accused criminal involvement in the narcotics business within the framework of the CNSA Act, 1997. Therefore, the accused/applicant should not be released from prison and his bail application should be rejected.

12. The learned defence Counsel for the applicant/accused, Aryan Afridi, sole ground to this Court to grant bail was that the accused had no conscious knowledge of the crime. He relied on several judgments of the Superior Courts in support of his submission on conscious knowledge, but NONE of them fit the situation at hand.¹ Both the reported and unreported Judgments relied upon by the defence Counsel do not deal with a bail application where the accused has filed the bail application in the backdrop of the co-accused in the FIR having been convicted and sentenced for 10 years or more under the CNSA Act, 1997 (as amended in 2022); and, even on the most tentative assessment, a prima facie link existed between the accused/applicant and convicted felons in different ways, as urged by the prosecution in the above-referred **threads (a), (b) and (c) above**; the interim challan being investigated would essentially involve the New I.O. confronting the applicant/accused with selected strings from the old investigation and the judicial recording of the trial proceedings; and the applicant/accused did not plead further inquiry. The case laws cited by the learned defence counsel were distinguishable on this score. They did not support the grant of bail in such circumstances and, consequently, were of no help to the accused/applicant, Aryan Afridi.

13. No enmity is alleged between the applicant/accused and the police, and the learned defence Counsel suggests none. The discretion under Section 497 Cr. P.C. could not be exercised unless there were grounds for believing that the applicant/accused is not linked with the

¹ Gul Manan v. The State, 2021 SCMR 1804; Khan Zeb v. The State, 2020 SCMR 444; Atif-ur-Rahman v. The State 2021 SCMR 324; Hussain Ullah v. The State, 2019 SCMR 1651; Dad Khan v. The State, 2020 SCMR 2062; Farhad Ali v. The State, 2022 SCMR 685; Amir Muhammad Sddiq and Another v. The State, 2023 P. Cr.L.J. Note 10 (Sindh); Qamar Zaman v. The State, 2017 YLR 873 (Sindh);and Unreported Order in SHC Cr. Bail Appln. No.S-200/2023 dated 08.06.2023;

commission of the crime in question. Here, a prima facie connection exists between the accused/applicant and convicted felons in different ways, recorded by me in this Order in the above-referred **threads (a), (b) and (c) above**, with which I tentatively concur, although the learned trial court will be in a better position to establish beyond reasonable doubt about the applicant/accused culpability after it has had the benefit of reviewing the evidence produced at trial. Yet for the quantity recovered, the punishment prescribed may extend to 10 to 14 years; no cause for the charge framed against the applicant/accused to be false or groundless is made out for the grant of bail in view of Section 51 of the CNS Act, 1997. Given all the moving parts of the crime, which involves three (3) narco gang members presently sentenced to jail, notwithstanding the alleged applicant/accused whose bail is being decided is currently in prison too, the New I.O. is proceeding with the inquiry, and there is a likelihood/risk that the alleged main supplier, the applicant/accused, on bail, may repeat the offence, this is not “a case to err in granting bail is better than to err in declining” as observed by the Supreme Court of Pakistan. Accordingly, for the above reasons, the applicant/accused, Aryan Afridi, does not have a fit case for bail and the Cr. Bail Application 2622/2024 is dismissed.

14. Apart from the above reasons, the applicant/accused has also failed to make out any case for interference with the impugned order dated 07.11.2024, which is upheld for the reasons articulated by the trial judge in the said impugned Order and also for the reasons discussed by me above. The bail application is dismissed on this score, too.

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

JUDGE