

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.2460 of 2024

Applicant : Parvaiz Ahmed son of Abdul Ghafoor
through Mr. Mallag Assa Dashti, Advocate

Respondent : The State
through Mr. Sarfaraz Ali Mangi, Special
Prosecutor ANF.

Date of hearing : 08.04.2025

Date of order : 15.04.2025

ORDER

KHALID HUSSAIN SHAHANI, J. – Applicant Pervaiz Ahmed seeks post-arrest bail in a case bearing crime No. 75/2024 , offence u/s 9(2) Sr.No.9, 14 & 15 of the Control of Narcotic Substances Act, 1997 (as amended by Act of 2022) of Police Station ANF MACHS Korangi, Karachi. The earlier bail plea of the applicant was declined by the learned Special Court-I, CNS, Karachi, vide order dated 18.05.2024.

2. As per prosecution case, on 17.10.2023, complainant Sub-Inspector of ANF along with subordinate staff conducted a raid at the premises of DHL Linker Courier Company located at D'souza Road, near Asma Terrace, Karachi, where Fazal Abbas, the Operation Manager handed over a suspicious shipment booked for Australia. Upon inspection, three wooden tables, two small and one large, were found containing concealed narcotic substance. Laboratory analysis confirmed the substance to be Methamphetamine (ICE), weighing 9.400 kilograms. The name of the sender was mentioned as Parvaiz Ahmed (Applicant), while the recipient was shown as Modeleine Cox Pery, residing in Sydney, Australia. On 23.10.2023, acting on a tip-off, the ANF apprehended the applicant near Maka Hotel at Li Market, Karachi. During investigation, the applicant allegedly disclosed his role in booking the said shipment. A statement under Section 161 Cr.P.C. of the booking clerk, Ishtiaque, was recorded, wherein he identified the applicant as the person who came personally to book the parcel in question.

3. Learned defense counsel contended, the applicant has been falsely implicated in the case without concrete or recoverable evidence from his exclusive possession. He emphasized the absence of any identification

test parade, which was necessary to substantiate the identity of the accused. It was further argued that no independent public witnesses were associated at the time of arrest or during the seizure of the contraband, despite the recovery allegedly taking place in a populated area. He submitted that the CCTV camera footage from the courier office is crucial to ascertain the identity of the person who booked the parcel, which has not yet been produced before the Investigating Officer and Court. The applicant is stated to be suffering from chronic kidney disease and other urological complications, requiring consistent treatment. In support of his arguments, the learned counsel placed reliance on several authorities including 2020 YLR Note 25, 2013 YLR 2009, 2012 P.Cr.L.J 1046, 2022 YLR Note 72, unreported orders of this Court, and the judgments reported as 2019 SCMR 1651, 2021 SCMR 324, 2020 SCMR 2062, 2020 SCMR 2064, 2017 SCMR 531, 2019 YLR Note 68, and 2023 P.Cr.L.J Note 10.

4. Conversely, the learned Special Prosecutor ANF opposed the grant of bail and fully endorsed the findings recorded during investigation. He submitted that the parcel was booked by the applicant himself, which has been categorically confirmed by the statement of the booking agent recorded under Section 161 Cr.P.C. It was argued that once the witness has clearly identified the applicant at the time of booking and the parcel bore his particulars, there was no need to conduct a formal test identification parade, particularly when the arrest was made in consequence of actionable intelligence and the applicant's own disclosure. Regarding the CCTV footage, it was submitted that the same has been secured and would be produced during trial, and its evidentiary value would be assessed after recording of evidence. It was further argued that the applicability of Section 103 Cr.P.C. is excluded in view of the fact that the place of recovery was a private premises (courier service), and the Manager, booking agent, and other members of the courier company were cited as prosecution witnesses. The learned prosecutor also referred to Section 35(1) of the Sindh Control of Narcotic Substances Act, 2024, Sindh Act No.VIII of 2024, which provides bar for grant of bail, contending that the offence falls under the prohibitory clause of Section 497(1) Cr.P.C. and carries a punishment from 10 to 14 years imprisonment and fine. It was further submitted that the recovered contraband has a market value running into millions, and no enmity has been established by the accused to suggest false implication.

5. I have heard the learned counsel for the applicant as well as the learned Special Prosecutor ANF, and have meticulously examined the material available on record. The allegations emerging from the contents of the FIR and the progress of the investigation prima facie disclose that a substantial quantity of narcotic substance weighing 9.400 kilograms of Methamphetamine was recovered from a parcel booked for international shipment. The said consignment was discovered during routine screening procedures at a private courier company's facility. The booking details reflect that the consignment was dispatched in the name of the present applicant, and notably, during investigation, the courier company's booking agent provided a statement under Section 161 Cr.P.C., wherein he unequivocally identified the applicant as the individual who personally appeared at the office and booked the said parcel. The contention regarding the absence of public witnesses at the time of recovery or arrest does not, in the facts and circumstances of the case render the prosecution case doubtful at this stage. The witnesses cited by the prosecution include private persons who are directly involved in the transaction, such as the booking agent and the operations manager of the courier company, which sufficiently satisfies the evidentiary requirement at the pre-trial stage and excludes the applicability of Section 103 Cr.P.C.

6. As regards the objection raised by the defense concerning the non-conduct of a test identification parade, it is settled law that such omission loses significance where the witness has already had the opportunity to observe the accused at the relevant time and later confirms the identity during the course of investigation. In the present matter, the witness has categorically named and described the applicant during investigation, based on his prior interaction at the time of booking the parcel. Therefore, the argument that a test identification parade ought to have been conducted is misconceived and does not render the prosecution case doubtful at this stage. It is also relevant to note that the applicant was arrested on the pointing of the investigating agency, and such recovery and linkage with the incriminating consignment further strengthens the prosecution's claim. The availability of CCTV footage from the booking office, although relied upon by the prosecution, is a matter of evidence that shall be evaluated at the time of trial upon proper production and proof. The evidentiary value and authenticity of such footage cannot be determined at the bail stage.

7. It is further to be noted that the quantity of the narcotic substance recovered is over 9 kilograms of Methamphetamine, falls within the ambit of commercial quantity as defined under the Sindh Control of Narcotic Substances Act, 2024. The nature of the offence is grave, and the substance was intended to be trafficked abroad, thereby attracting the statutory bar contained in Section 35(1) of the said Act. The offence is punishable with imprisonment up to 14 years and not less than 10 years, and thus falls squarely within the prohibitory clause of Section 497(1) Cr.P.C. The applicant has not been able to demonstrate any mala fide on the part of the prosecution or the investigating officer that could bring the case within the ambit of "further inquiry" as envisaged under the first proviso to Section 497 Cr.P.C. The case law cited by the learned counsel for the applicant, while not without merit in appropriate cases, is distinguishable on facts and does not apply to the present scenario where direct evidence in the form of identification and recovery exists.

8. In view of the above discussion, I am of the considered view that the applicant has not been able to make out a case for the grant of post-arrest bail. The prosecution has, at this stage, placed sufficient material on record to prima facie connect the applicant with the commission of the alleged offence. As such, the bail application being devoid of merits stands dismissed.

9. Nevertheless, in the interest of expeditious justice and to ensure that the applicant's right to a fair and speedy trial is not prejudiced, the learned trial Court is directed to conclude the trial within a reasonable time.

J U D G E

Shahbaz