

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI.
Cr. Bail Appl. No.2382 of 2024
(Shahid Khan vs. The State)

Cr. Bail Appl. No.2067 of 2024
(Naimatullah Khan vs. The State)

02.12.2024.

Mr. Shoukat Hayat, advocate for applicant in Cr. B.A. No.2067/2024
 Mr. Aamir Mansoob Qurshi, advocate for applicant in Cr. B.A. No.2382/2024
 Barrister Mian Haad A.M. Special Prosecutor, ANF

ORDER

MUHAMMAD IQBAL KALHORO J: Applicants are seeking post-arrest bail in Crime No.20/2022, u/s 6/9-C read with sections 14/15 of the CNS Act, 1997 at Police Station ANF-Clifton, Karachi.

2. As per brief facts of FIR, on 31.05.2022 at about 2200 hours, on spy information, ANF team, headed by Inspector, Nisar Ahmed of Police Station ANF Clifton, Karachi, reached SAPT Port, Karachi, and on examination of a Container No.XYLU-1063479, recovered 145 kgs of ketamine, which was concealed in the fabric rolls. From analysis of documents, it transpired that Dynamic Enterprises owned by applicant Naimatullah Khan was trying to export the said shipment to Josseca Locus Advents Fabric, Hong Kong. Applicant Naimatullah Khan, who was present at the spot, was arrested along-with a co-accused. The recovered contraband stuff was taken into possession and brought at the Police Station along with both the accused, where FIR was registered. Subsequently, it transpired that owner of the said shipment was applicant Shahid Khan (Cr. B.A. No.2382/2024). As he could not be arrested, in his absence the Challan was submitted in the Court.

3. Applicant Naimatullah Khan (Cr. B.A. 2067/2024), who was arrested on the same day viz. 31.05.2022 is in jail since, and has filed this application for bail on statutory ground of delay. His counsel has contended that there are 07 witnesses cited in the Challan out of whom evidence of only 01 witness and partial evidence of complainant has been recorded. Meanwhile, the Court fell vacant and hence, the case was delayed. Recently, applicant Shahid Khan has been arrested on 24.06.2024 and hence a fresh charge is to be framed in the case against all the accused. Resultantly the witnesses already examined would be re-examined, which will cause further delay in the trial for which applicant cannot be made responsible. According to him, the case diary shows that delay in trial has occurred due to failure of prosecution to bring the witnesses in the Court. Learned defence counsel in support of his arguments has relied upon the case laws reported in **2024 SCMR, 2024 SCMR 28, PLD**

2024 SC 4922017 SCMR 1194, PLD 1990 SC 934 1999 SCMR 1271, 2001 SCMR 14, 2019 SCMR 1651 2010 SCMR 927, and 2024 P Cr.LJ 370

4. Learned counsel for the applicant Shahid Khan (Cr. B.A. No.2382/2024) has argued that applicant's name has been disclosed by co-accused Naimatullah Khan to be owner of the narcotics, his statement is not admissible in terms of Article 38 and 39 of Qaunana-e-Shahdat Order, 1984 hence, applicant is entitled to bail. According to him, besides disclosure of name of applicant by co-accused, it is alleged that during interrogation applicant has admitted his guilt before the ANF officials, which too, in his view, is inadmissible and cannot be relied upon. Learned defence counsel in support of his arguments has relied upon the case laws reported in **2013 SCMR 669, 2001 SCMR 14, 1999 SCMR 1271, 2011 YLR 355 Karachi,** and **2023 P Cr.LJ Note 10**

5. On the other hand, learned Special Prosecutor, ANF has opposed bail to both the accused stating that delay has not occurred due to any fault of prosecution but because of absence of defence counsel on the dates when the witnesses were present. In regard to applicant Shahid Khan, he has submitted that sufficient evidence during investigation has been collected against him and he is the actual owner of the property, which applicant Naimatullah Khan being exporter was trying to export to Hong Kong in collusion with him.

6. I have considered submissions of the parties and perused material available on record and taken guidance from the case laws cited at bar. It is settled that while deciding a right of accused to bail on statutory ground, the mathematical computation of the dates on which either the applicant's counsel was absent or the witnesses were not present is neither permissible, nor can reasonably be pressed into service, being beyond the scope of tentative assessment. The case record shows that some time the defence counsel was absent when the witnesses were present and *vice versa*. However, no one disputes that meanwhile the trial Court has succeeded in examining at least 01 witness completely and the other witness partially as his cross examination could be completed for want of presence of defence counsel, and the Court fell in the meantime vacant. Now reportedly, another Presiding Officer has been posted in the Court and the case is poised to commence without any hindrance. *Prima facie*, there is sufficient evidence against applicant Naimatullah. He was arrested from the spot and is exporter of the shipment in which huge quantity of narcotics was being exported to Hong Kong. No doubt expeditious trial is the right of an accused, but when due to perceptible

shenanigans of the accused, the case is delayed; he would not be permitted to cite such a right for claiming bail.

7. No doubt, the name of applicant Shahid Khan was disclosed initially by applicant Naimatullah Khan at the spot to be the owner of the case property but in the ensuing investigation such disclosure has been confirmed. As per investigation, this applicant had arranged the narcotics through one Noman Jillani and had hired one lady Jassica Louis as the front women for shipment expert to receive the shipment at Hong Kong to be exported by accused Naimatullah. It has also transpired in the investigation that in order to build his repute, accused Shahid Khan had earlier sent a shipment to Hong Kong without any narcotics. On the basis of material that he is involved in the narcotics business, and earning money from it, another FIR bearing Crime No.26/2024, u/s 3/4 Anti Money Laundering Act, 2010 has also been registered against him.

8. All these facts found in the investigation are relevant and only when the trial is held, the authenticity or otherwise thereof can be judged in favour of either party and not at this stage. This applicant was arrested on 24.06.2024, when reportedly the Court was lying vacant. Now another Presiding Officer, as stated above, has taken the charge, and therefore, in order to meet the ends of justice, it would be appropriate to allow the prosecution to present his evidence within a reasonable time and only then decide the right of the accused to bail.

9. Therefore, while dismissing both applications, I direct the trial Court to examine material witnesses without fail, within a period of 04 months. After that period, in any case, whether all the witnesses are examined or not, the applicants would be at liberty to move a fresh bail application, which if filed, shall however be decided on its own merits.

10. Bail application are disposed of in the above terms; the findings made hereinabove are tentative in nature and would not prejudice case of either party at trial.

Office to place a copy of this order in connected bail application.

J U D G E

Rafiq/P.A