

**ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI.**

Cr. Bail Appl. No.1039 of 2025

19.05.2025

Mr. Shoukat Hayat, Advocate for applicant.
Mr. Sarfraz Ali Mangi, Spl. Prosecutor ANF.

ORDER

MUHAMMAD IQBAL KALHORO J: Applicant Naimatullah Khan is seeking post arrest bail in Crime No.20/2022 U/s 6,9-F, 14, 15 of CNS Act, 1997 of P.s. ANF Clifton Karachi.

2. On merits, applicant's application for post arrest bail was dismissed by this court on 02.12.2024 and the trial court was directed to examine material witnesses without fail within a period of four months. Applicant has filed this application for a fresh consideration to grant him post arrest bail mainly on the ground that directions of this court have not been complied with; there is delay of four days in sending the sample to the Chemical Examiner; witnesses have contradicted each other materially in cross-examination; to a suggestion in cross examination, I.O. has admitted that he has not collected any material to establish conscious knowledge of recovery of narcotics by applicant; the applicant is in jail since the date of his arrest viz. 31.05.2022, hence he is entitled to bail. To support his contentions, he has relied upon 2017 SCMR 1194, 2024 SCMR 1479, 2024 SCMR 28, PLD 2024 SC 492, 2002 MLD 1416 PLD 1990 SC 934, 1999 SCMR 1271, 2001 SCMR 14, 2019 SCMR 1651, and 2010 SCMR 927.

3. As per brief facts, 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.

4 At the time when previous bail application of applicant was decided on 02.12.2024, only partial evidence of one witness i.e. examination-in-chief was recorded and cross-examination was reserved for want of presence of one or the other defence counsel. The progress report called from the trial court during pendency of this application now reflects that in all eight witnesses have been examined including I.O. of the case. The case is at the verge of conclusion and only two witnesses one of whom is a Pickup driver are yet to be examined. This progress report proves that in compliance of this court's order, the trial court has taken efforts and is about to wrap up the case. Mathematical calculation of time for concluding the case can neither be made nor is desired for deciding right of accused to bail on statutory delay. When all the material witnesses have been examined and they have prima facie implicated the applicant in the case, he would not be considered entitled to grant of bail on statutory ground.

5. Another ground taken by the applicant is that in some petition pending before this court challenging a notification dated 15.10.2021 declaring ketamine as psychotropic substance, the courts have been directed not to pronounce the judgments in such cases. However, the progress report shows that in the present case, no stay is operating, therefore, there seems to be no impediment to the disposal of the present case by the final judgment. Learned Special Prosecutor ANF in his arguments has suggested that since the trial is at the verge of conclusion, a direction of two months will serve the interest of justice as meanwhile the case would be concluded and judgment would be announced.

6. Therefore, while dismissing the bail application in view of discussion as above, the trial court is directed to examine the remaining two witnesses and decide the case within a period of two months. After which if for any reason directions are not complied with and judgment is not announced, the applicant would be at liberty to move a fresh bail application before the trial court, which will be decided on its own merits.

Needless to mention that observations made hereinabove are tentative in nature and would not be prejudice case of either party at trial.

The bail application is disposed of in the above terms.

J U D G E