

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Cr. Misc. Appl. No.288 of 2026
(Mst. Jannat Bibi Vs. The State)

Present:

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Khalid Hussain Shahani

16.04.2026

Mr. Gulsher Baloch, advocate for applicant
Mr. Habib Ahmed, Special Prosecutor ANF a/w Mr. Abid Ali
Jatoi, Prosecutor ANF a/w Insp. Amir Hussain I.O.

ORDER

Muhammad Iqbal Kalhoro, J:- Applicant, accused in FIR No.07/2026 U/s 6,9(2), 14,15 CNS Act, 1997 of P.S. ANF Karachi registered against recovery of 180 Acetyl Fentanyl tablets weighing 50 grams from her, has impugned an order dated 04.03.2026 passed by learned Sessions Judge, Malir, Karachi upholding the order of the Magistrate refusing to entertain bail application of applicant on the ground that he lacked the jurisdiction.

2. Applicant's counsel has argued that applicant is in jail since 1.2.2026 and the Magistrate before whom, bail application was filed and before whom, the challan was to be submitted has refused to entertain bail application on the ground that FIR is addressed to Special Court CNS and by virtue of section 46 of CNS Act it is only the said court which can try the offence. According to him, when he challenged the order before learned Sessions Judge, he concurred with him and as a result, neither the Special Court CNS is accepting the Challan on the ground that the offence is punishable only for 2 years which is triable by the Magistrate, nor the Magistrate. Applicant has been rendered remediless as neither of the courts are taking cognizance and proceed with the matter, which is unsustainable under the law.

3. On the other hand, learned Special Prosecutor ANF submits that in terms of section 46 of CNS Act, two Special Courts have been provided. Firstly, the Special Court having power to try all the offences and the Special Courts having power to try the offences punishable for

imprisonment with two years or less. This section further defines that in regard to Special Courts-I, the person who is or has remained Sessions Judge will be appointed as Special Judge, whereas in regard to second category, the person who is or has been judicial Magistrate of the first class is competent to be appointed as Special Judge. Therefore, Judicial Magistrate Malir Karachi, whose court has been notified to be the Special Court to try such offence is a relevant court to accept the challan and entertain the bail application, as the case in hand is punishable upto 02 years. Per him, when the Challan by the I.O. was submitted before the said Magistrate, he opined that since the offence carries fine upto Rs.100,000/- besides terms of imprisonment of two years, he has no jurisdiction and returned the same.

4. We have considered submissions of the parties and are of the view that Judicial Magistrate Malir Karachi, whose court is duly notified is the relevant court to try the offence as per Table/schedule which shows that alleged offence is punishable upto two years. Insofar as the amount of fine upto Rs.100,000/- is concerned, which appear to be more than the amount, the Magistrate under the law is competent to impose, it may be said that the Magistrate can always impose fine upto the amount, he has jurisdiction to.

5. Notwithstanding, there is another aspect, in terms of section 46 , the Judicial Magistrate trying an offence under the CNS Act, carrying punishment upto 2 years is actually acting as a Special Court and exercising special jurisdiction. While acting and exercising the special jurisdiction, he is not bound by limitation of section 32 Cr.P.C, which defines his jurisdiction and authorizes him, among others, to impose fine not exceeding Forty five thousand only. Therefore, while acting as Special Court and exercising jurisdiction u/s 46 of the CNS Act, the Magistrate is empowered to impose fine upto Rs.100,000/- as provided in the table set out under section 9 of CNS Act, 1997.

6. The accused, who is in jail, cannot be allowed to rot there because of these technicalities, even otherwise. Non-entertaining the Challan and bail application by referring to section 46 of the CNS Act

or the fact that the FIR is addressed to Special Court CNS was not a correct approach and apparently has caused miscarriage of justice. We, therefore, set-aside both the orders and direct the I.O. to submit Challan before relevant Magistrate, who shall entertain the same and proceed with the case in accordance with law.

The Cr. Misc. application stands disposed of in the above terms.

JUDGE

JUDGE

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