

2020 Y L R Note 25

[Sindh]

Before Fahim Ahmed Siddiqui, J

ASIF ISLAM---Applicant

Versus

The STATE through POLICE STATION ANF CLIFTON and another---Respondents

Criminal Bail Application No. 856 of 2019, decided on 25th July, 2019.

Criminal Procedure Code (V of 1898)---

---S. 497---Control of Narcotic Substances Act (XXV of 1997), Ss.6 & 9(c)---Possession of narcotic---Bail, grant of---Prohibition of possession of narcotic drugs---Recovery of 59 KG heroine---Name of the accused did not appear in the FIR nor was he associated as one of the culprits---Accused's name was shown in the second interim challan after lapse of one year---Accused was involved through some information conveyed by the owner of godown and some other person---No identification parade was held---Accused was identified by his photograph---No other evidence was available for identification---Accused, after arrest was not produced before the Trial Court, even not shown as arrested person---Case of accused was that of further enquiry---Bail was granted, in circumstances.

Raj Ali Wahid for Applicant.

Habib Ahmed and Ms. Abida Parveen Channar, Special Prosecutor, ANF for the State.

Date of hearing: 10th July, 2019.

ORDER

FAHIM AHMED SIDDIQUI, J.---The applicant is detained in a criminal case initiated upon lodging of FIR No. 37/2015 at Police Station ANF, Clifton under section 6/9(c), which was registered on 25-09-2015. By moving this application, the applicant is seeking his release on bail during pendency of trial.

2. I have heard the arguments advanced by the learned counsel for the applicant as well as the learned Special Prosecutors. I have also scanned the available material in the light of arguments advanced from either side, from which I have gathered following important aspects of the case:

- a) It is the prosecution case that the ANF authorities received a tipoff that international smugglers namely Barkat Masih, Majeed Showroom Wala and Zahid Malang are attempting to smuggle heroin in heavy power press machine's wheels available in Container No. SIKU-3101567. Per information, it was done through their companion namely Asif Iqbal on the basis of export form of Areeb International. On such information, ANF raiding party reached at KICT and approached to the said container, where clearing agent Syed Dilawar Hussain and one Asif Iqbal (agent of Barkat Masih i.e. owner of consignment) were already available. The requisite documents were obtained from the clearing agent and container was opened wherein a power place machines along with nine different sizes of iron wheels were recovered. The wheels were broken wherefrom 59 KG heroine was recovered. Proper sampling was done and accused were taken into custody and subsequently FIR was lodged.

- b) It is worth noting that the name of the applicant does not appear within the body of FIR even after initial investigation, the applicant was not associated as one of the culprits in the entire episode.
- c) As per FIR, the spy informer has given a proper information about the container number, the consignment therein in an even the names of the international smugglers of narcotics but he had not quoted the name of the present applicant to the ANF authorities.
- d) In the instant case, the second interim challan was submitted after lapse of one year in which the name of the applicant was shown as one of the accused persons involved in the alleged offence.
- e) When the applicant was involved in this case, he was already under custody in another case being FIR No. 62/2015.
- f) For involvement of the applicant, the investigating agency has relied upon some information conveyed to them by the owner of a godown and some other persons, while the identification of the applicant was done on the basis of his photographs shown to them.
- g) The Investigation Officer did not bother to get the applicant identified through a proper identification test parade or even the photographs from which, it is claimed that the applicant was identified, were not put for identification by the witnesses before a Judicial Magistrate.
- h) The investigation agency has produced a rental agreement regarding the godown in which it is alleged that the said power press machines were kept for some time and it is worth noting that the name of the applicant does not mention as a tenant or in any other capacity in the said rent agreement.
- i) As per subsequent Investigation report, the power press machines were kept in Lahore from where they were transported to Karachi but the investigation agency has not collected some credible evidence showing that the applicant is the person who has hired or arranged some logistics service for transportation of the alleged container from Lahore to Karachi.
- j) In the present scenario, the only evidence available against the applicant is the identification of some photograph allegedly of the applicant, for which it was claimed by the prosecution that the same were identified by the owner of the godown and some other persons before the ANF personnel, which is actually an extrajudicial identification, which has weakened in the case of the prosecution up to the extent of the applicant.
- k) The applicant was formally arrested in this case but after his arrest, he was never produced before the trial Court even he was not shown as the arrested accused in this case. Even, the second interim final report showing his arrest was placed before the trial Court, when the counsel for the applicant brought to this fact into the knowledge of the trial Court in the record, the applicant is shown arrested in this case.
- l) After placing of the second interim final report before the trial Court with a delay of more than one year after his arrest the applicant was formally shown as accused in this case

and during this period the trial Court remained oblivion about his arrest in the case as such no production warrant was issued for him for such a long period.

m) This attitude of the prosecution is shocking and deplorable and the same speaks volumes regarding the prosecuting agency. The explanation given by the prosecution is also astonishing, according to which this delay in communication of his arrest to trial Court will make no difference for the applicant as he is already under arrest in another case in which he has yet not been released on bail or acquitted.

3. In view of the above observations, it is my unwavering and staunch opinion that the case against the applicant is a fit case of further probe; as such a case of bail has been made out in his favour. Resultantly, the applicant is admitted to bail subject of furnishing solvent surety up to the extent of Rs. 1,000,000/- (Rupees One Million Only) and PR bond in the like amount upto the entire satisfaction of the trial Court through my short order dated 10.07.2019 and these are the reasons for the same.

4. It is further observed that if after releasing the applicant on bail, he chooses not to appear before the trial Court and the trial Court is satisfied that the applicant becomes fugitive to law and trial or there are other grounds available before the trial Court that the applicant has violated the spirit of the relief given to him through this bill order; then the trial Court will be fully justified to take any action against the applicant including cancellation of his bail and taking action against his surety without making a reference to this Court.

5. Needless to say that the above observations are purely tentative in nature; as such it is supposed from the trial Court that it would not deviate from the golden rule of 'justice according to law without any fear in favour' due to these tentative observations.

FRM/A-167/Sindh Bail granted.