

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
LARKANA

Criminal Bail Appln. No. S-122 of 2024

Applicant	Gul Bahar @ Engineer s/o Hidayatullah Shaikh
	Through Mr. Abdul Baqi Jan Kakkar, Advocate
The State	Mr. Khalil Ahmed Mettlo, D.P.G.
Date of hearing:	02-05-2024
Date of Order:	02-05-2024

SHAMSUDDIN ABBASI, J.- Through instant criminal bail application the applicant/accused Gul Bahar @ Engineer Shaikh seeks post-arrest bail in Crime No. 188/2023, registered at Police Station New Foujdari, for the offence U/S 6-9/E, Sr. No.3, C.N.S, 9/D, Sr.No.1, Amended 2022, after rejection of his bail plea by the learned trial court vide order dated 19.02.2024.

2. The facts of the prosecution case are that on 21.09.2023, at about 1230 hours, the applicant/accused along with other male and female accused were arrested by the patrolling police party of Police Station New Foujdari, headed by S.I.P/S.H.O Mashooque Ali Shar, one kilogram of Cahras in shape of two slabs was recovered from bodily search of each arrested accused, so also four maunds and 30 kilograms of chars (total 197 kilograms) and five maunds of hemp (total 200 kilograms) were also recovered on the pointation of one of the arrested accused namely Rizwan after digging the earth (graves) in presence of mashirs, hence the accused were booked in the instant case.

3. Learned counsel for the applicant/accused contends that applicant/accused is innocent and he has been falsely implicated in this case; that alleged recovered charas from the possession of applicant is less than one K.G and punishment provided for the alleged offence is upto nine years, therefore, the offence does not come within the prohibitory clause of Section 497 Cr.P.C; that this court has declined the bail of co-accused Mst.

Fareeda and Mst. Sarwar Khatoon vide order dated 01.12.2023 and said order has been assailed before the Hon'ble Supreme Court and Hon'ble Supreme Court granted the bail to the co-accused vide order dated 16.01.2022 and learned trial court has also granted bail to other three lady co-accused vide order dated 09.02.2024; that bail declined by this Court to applicant and co-accused Ali Jan was not on merits, therefore, case of applicant/accused calls for further inquiry in terms of Section 497 Cr.P.C.

4. Learned Deputy Prosecutor General has vehemently opposed for grant of bail on the ground that applicant is nominated in the offence and more than one K.G charas has been recovered from his exclusive possession, which has brought the case of applicant within the prohibitory clause of Section 497 Cr.P.C; that huge quantity of charas has been recovered on the pointation of co-accused Rizwan Shaikh; that the applicant and his other family members are involved in selling of charas, therefore, he is not entitled for grant of bail.

5. Heard learned counsel for the applicant, learned Deputy Prosecutor General and perused the material available on the record.

6. Admittedly in the alleged incident four lady and 3 male accused were arrested along with one K.G charas from exclusive possession of each accused and on the pointation of co-accused Rizwan, the police also recovered huge quantity of charas weighing total 4 mounds, 30 K.Gs and 5 mounds of Bhang from the graveyard.

7. The alleged charas recovered from the exclusive possession of applicant is less than 999 grams and punishment provided under Section 9(3)(b) of C.N.S, Amendment Act, 2022, which may extent to nine years but shall not be less than five years with fine which may extent to eighty thousand but not less than forty thousand rupees. This aspect of the case brings the case of applicant out of prohibitory clause of Section 497 Cr.P.C. Hon'ble Supreme Court has granted bail to co-accused Fareeda Shaikh vide order dated 16.01.2024. For the sake of convenience, said order is reproduced as under:-

"The learned counsel for the petitioner states that the petitioner along with six others were nominated in F.I.R No.188/2023, registered on 21 September 2023 at Police Station New Foujdari, Shikarpur. The role attributed to the petitioner, who is a lady, is that from her personal search one kilogram of charas was recovered, however, it is submitted that, the forensic laboratory had determined that it was less than a kilogram and the maximum punishment that the offence would attract would be nine years. He further states that a large quantity of charas was statedly recovered on the pointation of the co-accused, namely, Rizwan. Concluding his submissions, he states that since the petitioner's case does not attract the death penalty or imprisonment for life or imprisonment for 10 years, she is entitled to bail U/S 497(1) of the Criminal Procedure Code, 1898, and would further be entitled to bail in view of the first proviso thereto as she is a woman.

Therefore, without commenting upon the merits of the case, the petitioner is enlarged on bail in the case arising of F.I.R No.188/2023, dated 21 September 2023, registered at Police Station New Foujdari, Shikarpur, in the sum of one hundred thousand rupees with bail bonds and one surety in the like amount to the satisfaction of Trial Court."

8. More over learned trial court has also admitted on post-arrest bail to co-accused, namely, Mst. Sarwar Khatoon, Mst. Hakim Khatoon and Mst. Dadi Shaikh, vide order dated: 09.02.2024 on the principle of rule of consistency. Case of applicant does not come within the prohibitory clause of Section 497 Cr.P.C. It is well settled principle of law that grant of bail in such cases is right and its refusal is exceptional. Reliance is placed on the case of *Muhammad Tanveer v. The State and another (PLD 2017 S.C 733)*. As for the contention that large quantity of charas and bhang were recovered on the pointation of co-accused from graveyard is concerned, this aspect requires further inquiry in terms of Section 497 Cr.P.C. As for contention raised that huge quantity of charas and hemp were recovered. In my humble view it was recovered on the pointation of co-accused Rizwan, therefore, case of applicant is distinguishable with the case of Rizwan.

9. Moreover case of applicant is on identical situation, therefore, he is admitted on post-arrest bail subject to furnishing solvent surety in the sum of Rs.100,000/- and P.R bond in the like amount to the satisfaction of trial court.

10. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial court while deciding the case of either party at trial.

11. Learned trial court is Model Criminal Trial Court, therefore, is directed to conclude the trial preferably within one month without granting adjournments to either party on any flimsy ground under intimation to this court through Additional Registrar of this Court.

J U D G E

Abdul Salam/P.A