

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Bail A. No.S-511 of 2021

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.
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1. For orders on O/objection at flag-A.
2. For hearing of bail application.

04.10.2021

Mr. Muhammad Aslam Shahani Advocate for applicant.
Mr. Shafi Muhammad Mahar D.P.G for state.

ORDER

ZAFAR AHMED RAJPUT; Through instant Crl. Bail application, applicant/accused Noor Hassan son of Jamaluddin Bhayo seeks post-arrest bail in Crime No.156 of 2021 registered at Police Station, 'A' Section, Ghotki under Sections 9(c) of CNS Act, 1997. His earlier application for the same concession bearing No.1099/2021 was heard and dismissed by the learned I-Additional Sessions Judge (MCTC), Ghotki vide order dated 07.08.2021.

2. As per FIR, the applicant was arrested on 25.06.2021 at 0530 hours on being found in possession of Five Kilo grams Charas by the police party headed by SIP Anwar Ali Kori at Adilpur near Chorani Dhor.

3. Learned counsel for applicant contends that the applicant is innocent and has falsely been implicated in this case by foisting alleged charas; that the applicant has dispute over landed property with his step brothers who had implicated the applicant in number of false cases including matter in hand; that the applicant has already been acquitted of the charge in two cases viz. Crl. Case No.93/2020 arisen out of Crime No.117/2020, u/s 457 and 380 PPC, and Crl. Case No.102/2020 arisen out of Crime No.119/2020, u/s 457 and 380 PPC, both registered at Police Station 'B' Section, Khairpur by the Court of Judicial Magistrate Khairpur vide judgments dated 27.03.2021 and 09.06.2021 respectively; that the applicant/accused was forcibly taken away by SHO Police Station Daharki on 20.06.2021 and such application u/s 491 Cr.P.C was

filed by his wife Mst. Fehmeeda on the very next day viz. 21.06.2021 before learned Sessions Judge, Ghotki and on whose order a raid was conducted at said Police Station by the Judicial Magistrate, Daharki on 21.06.2021 which went un-successful and then after four days of the alleged raid the applicant/accused was shown arrested in the instant crime/FIR by SHO Police Station 'A' Section, Ghotki; that the case property viz. Charas was sent for chemical examiner with delay of 14 days in violation of Sub-rule(2) of Rule-4 of Control of Narcotic Substances (Government Analysts) Rule, 2001 which provides period of 72 hours for such act; that the case of the applicant requires further inquiry hence, he is entitled to post-arrest bail. In support of his contentions, learned counsel has relied upon the case of *Janib Ali Zardari v. The State* **(2014 YLR 632)**.

4. On the other hand learned Deputy Prosecutor General has vehemently opposed instant application on the ground that the applicant/accused was found in possession of huge quantity of Charas and he has not alleged any enmity with police of Police Station 'A' Section, Ghotki; that the delay in sending the case property for chemical analysis will be seen at the trial by the trial Court. In support of his contentions, he relied upon case of *Socha Gul v. The State* **(2015 SCMR 1077)** and *Noor Khan v. The State* **(2021 SCMR 1212)**.

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

6. It appears that earlier the applicant was arrested by police of Police Station 'B' Section, Khairpur in aforementioned crime Nos.117 and 119 of 2020 wherein admittedly the name of applicant does not transpire in the FIR and subsequently he was acquitted of the charge by the trial Court in aforementioned crimes vide judgment dated 27.03.2021 and 09.06.2021. It also appears that after recording his acquittal in aforementioned cases, on 21.06.2021 the wife of the applicant filed a CrI. Misc. application bearing No.152 of 2021 before the Court of Sessions Judge, Ghotki u/s 491 Cr.P.C stating therein that her husband (*applicant*) was taken away by the SHO Police Station, Daharki on 20.06.2021. On the instructions of learned Sessions Judge, Judicial Magistrate Daharki conducted raid at Police Station, Daharki on

21.06.2021; however, the applicant was not found confined at the Police Station. Later, on 25.06.2021 he was shown arrested by the Police of Police Station 'A' Section, Ghotki in the instant crime on the charge of possessing five kilo grams Charas. It is an admitted position that the alleged charas was sent to chemical examiner for analysis after 14 days of alleged recovery, which is in violation of Rule-4(2) of Control of Narcotic Substance Government Analysts Rules, 2001 which provides period of 72 hours for sending the case property/sample for analyzing. *Prima facie* no explanation is available with the prosecution for sending the charas with such delay. Had the police recovered the alleged charas from the possession of applicant on alleged day, the same should have been sent to Chemical Examiner within stipulated period. Non compliance of aforesaid Rule also casts serious doubts on alleged recovery. It is now well settled principle of law that benefit of doubt can be extended to an applicant/accused at the bail stage also. Hence, the applicant is entitled to have benefit thereof at the stage of bail. I, therefore, by allowing instant application admit the applicant on post-arrest bail subject to his furnishing solvent surety in the sum of Rs.300,000/- (Rupees three lacs) and PR bond in the like amount to the satisfaction of learned trial Court.

7. Needless to mention here that the observations made hereinabove are tentative in nature and shall not influence the trial Court for deciding the case of the applicant on merits and in case applicant try to misuse the concession of bail in any manner, the trial Court shall be at liberty to cancel the bail after giving him the requisite notice.

Application stands disposed of.

JUDGE

Ihsan