

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Crl. Bail Application No.S-414 of 2024.

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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For hearing of bail application.

Date of hearing **05.08.2024.**

Mir Ali Nawaz, Advocate for applicant/accused.
Syed Sardar Ali Shah DPG for State.

ORDER

Through instant bail application, applicant Rasool Bux son of Qadir Bux Siyal seeks Post-arrest bail in Crime No.36/2024 registered at Police Station, Kumb district, Khairpur for offence under Sections 9(d) CNS Act,1997. Earlier their bail application was declined by learned Additional Sessions Judge-I/(MCTC), Special Judge (CNS), Khairpur vide order dated 08.06.2024.

According to the FIR the present applicant alongwith the contraband material of Bhang while driving a vehicle was apprehended whereas at the time of the said arrest another person ran away and could not be arrested.

The applicant’s father had filed application in respect to the I.O, for letting go of the actual accused against taking gratification whereas his son who is taxi driver has been fixed in the case.

In compliance to the order passed in earlier dated SSP has submitted the report whereby the application filed by the father of the applicant was got investigated again as this Court was not satisfied by the earlier inquiry made earlier with a change of the superior officer. The said report submitted denies the *malafides* alleged against the concerned officials. Said report taken on record without all just exceptions.

Learned counsel for applicant relied upon the contents of bail application contended that the Narcotic case has been foisted upon the present applicant.

Learned Additional Prosecutor General, however, contends that a huge quantity of Narcotics being Bhang has been recovered from the possession of the present applicant who has been charged under Section 9(d) of CNS Act, 1997. He further contends that the said offence presently provides a penalty of 'Life Imprisonment' and may extend to 14 years disentitles the concession of bail. He further contends that the applicant has not denied being the driver of the vehicle and he was incharge of the same. In this regard he has relied upon cases of *Abdul Hayee and 2 others v. The State through Prosecutor General Balouchistan* (2017 P.Cr.L.J 445), *Akhtar Zareen v. The State* (2020 P.Cr.L.J 229), *Shahpur v. The State* (2016 MLD 857) and *Budho v. The State* (2017 YLR Note 447) contending that the responsibility of the driver as reportedly is being present and his said status disentitles him to the concession as the present offence is carry the said punishment whereby a huge quantity of narcotics has been recovered. It is also contended that the vehicle is not registered as a Taxi for commercial hire as per the prevailing practice private vehicles are being used.

Having heard learned counsels and gone through the record. I had in the morning at the first round specifically called upon the learned Additional Prosecutor General to address the element of use of Taxi as coming-up in the reports referred supra i.e. the fact as such coming out which ought to have been brought-up by the investigating officer. Bringing forward the element of subject vehicle and the applicant using the same for public transport. Apparently and irrespective to the status of registration and according to the prevailing practice as coming out

from the word 'Taxi' the vehicle was *prima facie* available for commercial hire. The FIR itself states that one person had run away at the time of incident. In the said circumstances though no question may be taken-up in respect of the driver being arrested and or even interrogated, however, the sending-up of the trial requires the driver of such commercial natured vehicle to be booked accordingly for the purpose of the alleged Narcotics said to be recovered and alleged to be in his actual possession with some more material to be positively connected with the alleged offence as nor come-up. In this regard on query of this Court it is also reported that the present applicant is without any negative CRO. It is also observed that the two reports referred above do not deny the said element of commercial hire i.e. Taxi. In the said circumstances irrespective to the severity of the allegation the case is found to be of further inquiry and as such present bail application is allowed. The present applicant namely, Rasool Bux Siyal if, not require in any further crime may be released on bail on submitting solvent surety in the sum of Rs.200,000/- (Rupees Two lacs) and PR bond in the like amount to the satisfaction of trial Court.

Needless to mention here that observations made herein above are tentative in nature and trial Court may not be influenced of the same and decide the case on its merits.

Bail application stands allowed and disposed of in the above terms.

J U D G E

Ihsan/PS