

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI,
Cr.B.A.No.224 of 2019.

DATE ORDER WITH SIGNATURE OF JUDGE

1. For orders on MA. No. 2174 of 2019.
2. For orders on MA No. 1434 of 2019.
3. For hearing of bail application.

Date of hearing 11.03.2019.

Date of short order 11.03.2019

Mr. Ahmed Khan Baloch and Asif Mastoi, advocates for applicant.
Mr. Faheem Hussain Panhwar, Deputy P.G. Sindh.

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1. Through instant bail application, applicant/accused Mst. Fauzia, seeks post arrest bail in Crime No.10 of 2019 registered at Police Station Saahil, Karachi, for offence punishable u/s 6/9 (c), of C.N.S. Act, 1997.
2. Precisely, relevant facts of the case are that on 0602.2019 police party of P.S. Saahil, headed by PI/SHO, was busy in patrolling of area. It was about 0015 hours when the police party reached near Avenue, Farhan Shaheed Park DHA Phase-VIII, they on suspicious apprehended one lady, who on inquiry disclosed her name as Fauzia daughter of Abdul Ghaffar-Ex-wife of Liaquat Ali. The police conducted her personal search and recovered Hashish/charas weighing 02 Kgs from her possession. PI/SHO then arrested the accused and sealed the recovered property in presence of mashirs and ultimately lodged FIR under Section 6/9(c) of C.N.S. Act, 1997 on behalf of the State.
3. After registration of FIR, the investigation was followed and in due course challan was submitted before the Court competent jurisdiction where same is pending.

4. Thereafter, applicant/accused applied for post arrest bail before the learned Sessions Judge Karachi South but the same was dismissed vide order dated 12.02.2019, hence the present Bail Application.

5. Learned counsel for the applicant *inter-alia* contends that alleged recovery of charas is foisted against the applicant/accused; the applicant is not previously involved in same nature of the case; no independent person has been cited as witness; investigation is complete; all the prosecution witnesses are police officials hence there is no question of tampering with the prosecution evidence. He lastly contended that applicant is behind the bar since her arrest i.e. 06.02.2019 and hence he prayed for grant of bail to the applicant/accused.

6. Learned D.P.G. while opposing this application, has contended that this is a crime against society, hence, she is not entitled for concession of bail.

7. I have carefully considered the contentions of learned counsel for the parties and meticulously examined available record. *Prima facie*, the learned DPG has, *inter alia*, sought rejection of bail plea mainly for reason of *alleged* involvement of applicant / accused in a case, which, otherwise, squarely falls meaning of offence against society, therefore, I find it appropriate to add that such *charge / allegation* alone is never sufficient to keep one behind the bars for an *indefinite* period but even in such like case (s) there must be shown existence of reasonable grounds to believe *prima facie* linkage of charged accused with such charged offence. Such allegation and even bar, provided by Section 51 of Act, may well be *circumstances* but cannot operate as *decisive* for bail pleas because the bail pleas are to be granted or rejected on *tentative* examination of available material and not on basis of applied section / offence. There can also be no cavil that the cases of narcotics are the crime against society but accused, facing trial, possesses the presumption of innocence unless convicted by the Courts of law. I would feel myself safe in adding that criterion, detailed in the

case of Zaigham Ashraf v. State & Other 2016 SCMR 18, would be applicable even in case (s), falling within meaning of Narcotics. In said case, it was detailed as:-

“9. To curtail the liberty of a person is a serious step in law, therefore, the Judges shall apply judicial mind with deep thought for reaching at a fair and proper conclusion *albeit* tentatively however, this exercise shall not be carried out in a vacuum or in a flimsy and casual manner as that will defeat the ends of justice because if the accused charged, is ultimately acquitted at the trial then no reparation or compensation can be awarded to him for the long incarceration, as the provisions of Criminal Procedure Code and the scheme of law on the subject do not provide for such arrangements to repair the loss, caused to an accused person, detaining him in jail without just cause and reasonable grounds. Therefore, extraordinary care and caution shall be exercised by the Judges in the course of granting or refusing to grant bail to an accused person, charged for offence (s), punishable with capital punishment. The Courts are equally required to make tentative assessment with pure judicial approach of all the materials available on record, whether it goes in favour of the Prosecution or in favour of the defence before making a decision.
(underlining is mine for emphasis)

8. Perusal of the FIR shows that it does not mention that in which shape the alleged charas was recovered and in which thing it was wrapped? though these were required to be detailed by prosecution so as to avoid any *plea* of tampering / substitution of recovered articles. These, *prima facie*, aspects would require explanations from prosecution hence the same, till final determination, open the door of further probe. Further, it is also not denied that the applicant/accused is a woman, having two children by her side. The woman in *law* has been provided some privileges even while exercising jurisdiction under section 497(i) Cr.PC which, I insist, alone is not sufficient for releasing woman on bail but can well be taken as a circumstance, favouring to woman. The Courts are Guardians of the minors, and the welfare of the minors is to be kept in mind in all circumstances. The two minors with the applicant/accused are not shown to have any other refuge, except with the applicant/accused. These aspects also tilt the case in favour of the applicant / accused, particularly when prosecution has not claimed any *apprehension* of

absconsion of applicant / accused during her trial, if she is released on bail. I would take guidance from the case of JAVED vs. STATE (2017 SCMR 531) wherein the disability of an accused, charged with similar offence, was appreciated as one of the *grounds* for releasing him on bail.

9. Further, there is no record that applicant has remained involved in same nature of cases; all witnesses are police officials, therefore, there is no likelihood of tampering with the prosecution witnesses hence the applicant cannot be put behind the bars for an indefinite period merely for reason of his alleged involvement, particularly when it is settled proposition of law that bail cannot be withheld as punishment, therefore, whenever any doubt arises even at bail stage or circumstances justify the discretion needs be exercised in favour of accused as such release, *alone*, never deprives the prosecution to claim complete punishment at the ends of the day. Reference can be made to the case of **Tarique Bashir, reported in PLD 1995 SC 34.**

10. In the given circumstances and keeping in view the proposition of law in referred precedents, applicant has succeeded to make out a case for grant of bail. Consequently, she is admitted to bail subject to furnishing solvent surety in the sum of Rs.50,000 (Fifty thousand) and P.R. Bond in the like amount to the satisfaction of the trial Court.

11. These are the reasons for the short order announced in Court on 11.03.2019.

JUDGE

Sajid