

THE HIGH COURT OF SINDH KARACHI

Cr. Bail Application No. 1508 of 2019

For hearing of Bail Application.

Applicant : Dilawar son of Mir Ali through Mr. Muhammad Akbar Awan Advocate.

Respondent : The State through Mr. Muntazir Hussain Mehdi, Additional Prosecutor General Sindh.

Date of hearing : 12-11-2019

Date of order : 12-11-2019

ORDER

Adnan Iqbal Chaudhry J. - Along with two others, the Applicant/ Accused has been booked under FIR No.148/2019, under sections 6 & 9(b) of the Control of Narcotic Substances Act, 1997, (CNS Act, 1997) registered at P.S. Saeedabad, Karachi (West). Bail was declined to the Applicant by the Sessions Judge Karachi (West) vide order dated 07-05-2019; hence this bail application.

2. Per the FIR, on 17-04-2019 at about 10:00 hours, the Applicant alongwith the co-accused was going on a motorcycle when they were stopped by the patrolling police, and on a body search, *charas* was recovered from all three, two of the police constables being made witness to the recovery. The *charas* allegedly recovered from the Applicant is 300 grams, falling within the ambit of section 9(b) of the CNS Act, 1997 which prescribes a maximum punishment of 7 years. The FIR also alleges that the motorcycle on which the Applicant and the co-accused were riding, was a stolen vehicle.

3. Learned counsel for the Applicant relied on the case of *Ghulam Murtaza v. The State* (PLD 2009 Lahore 362) wherein a Full Bench of

Lahore High Court had approved a sentencing standard for cases falling under section 9 of the CNS Act, 1997 to commensurate with the quantity of narcotic drug or psychotropic substance recovered from the accused. Under that standard, if the narcotic drug recovered is *charas* exceeding 100 grams and upto 300 grams, then the sentence prescribed is RI for 1 year and three months and fine of Rs.9,000/- with SI for 3 months and 15 days in default of payment of fine. Learned counsel for the Applicant submitted that in view of such short sentence, the Applicant is entitled to bail. As regards the allegation of the stolen motorcycle, learned counsel submitted that in that regard FIR No.146/2019 was registered at P.S. Saeedabad under sections 392, 397, 34 PPC, and the Applicant has been granted bail therein. A certified copy of that bail order dated 11-06-2019 passed in Cr. Case No.971 of 2019 by the learned Assistant Sessions Judge, Karachi (West), was placed on the record.

4. The learned Additional Prosecutor General submitted that the chemical report, if any, is not available with him. However, he submitted that in view of the case of the *Ghulam Murtaza (supra)*, and in view of the fact that the case is border-line between sections 9(a) and 9(b) of the CNS Act, 1997, he does not oppose the grant of bail.

5. Heard the learned counsel and perused the record.

While the case of *Ghulam Murtaza* provides a sentencing guideline for cases under section 9 of the CNS Act, 1997, that guideline does not figure in while considering bail. In the case of *Socha Gul v. The State* (2015 SCMR 1077), also a case under the CNS Act, 1997, it was observed by the Supreme Court of Pakistan that the categorization of sentencing or a speculative exercise in that regard could not be undertaken by the Court at the bail stage lest that pre-empts the mind of the trial Court while determining the quantum of sentence upon conviction.

6. Regards the case relating to the stolen motorcycle, the order dated 11-06-2019 passed therein shows that the Applicant was granted bail therein on the ground that his name was not mentioned in the FIR but was introduced through the statement of the complainant therein, which statement was recorded after 10 days of the alleged robbery.

As regards the present case, a chemical report is not on the record. Nonetheless, the FIR does not state as to what prompted the police to suspect the Applicant and others with him during the day-time so as to stop them and to make a body search. It is not the case that the Applicant and the co-accused were stopped as they were riding a stolen motorcycle. Per the FIR, that fact was discovered later on after making an inquiry with the CPLC.

7. The challan was filed before the trial court on 13-05-2019, and since then the prosecution has not examined any witness. On the other hand, the Applicant is behind bars since 17-04-2019, for more than 6 months. The case does not fall within the prohibitory clause of section 51 of the CNS Act, 1997 nor within the prohibitory clause of section 497 Cr.P.C. In my view, this is a "fit case for the grant of bail" within the meaning of sub-section (2) of section 51 of the CNS Act, 1997. Therefore, the Applicant is granted bail subject to furnishing solvent surety in the sum of Rs.30,000/- [Rupees Thirty Thousand Only] alongwith P.R. Bond in like amount to the satisfaction of the trial court.

Needless to state, that the observations herein are tentative and nothing herein shall be construed to prejudice the case of either party at trial.

JUDGE

SHABAN/PA*