

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Application No.1402 of 2021

Date

Order with signature of Judge

For hearing of Bail Application.

03.09.2021

Mr. Saifullah, Advocate for the Applicant.

Ms. Rahat Ehsan, Addl. Prosecutor General, Sindh.

ORDER

Muhammad Saleem Jessar, J:- Through this bail application, Applicant Noor Muhammad seeks his release on post arrest bail in Crime No. 474/2021 of P.S Aram Bagh, Karachi, under Section 6/9-C CNS Act. The applicant preferred his bail plea before the first forum, which was turned down by means of order dated 12.07.2021; hence, he has approached to this Court through this Application.

2. The crux of the prosecution case is that police party headed by SIP Nadeem Hyder Solangi, while patrolling behind street of Sindh Secretariat, Karachi, found a person. On enquiry he disclosed his name to be present applicant. On his personal search, 64 grams of heroin was recovered and subsequently was taken into possession by the police in presence of official witnesses.

3. Learned counsel for the applicant submits that applicant is a labourer by his profession and has no nexus or concern with narcotics dealers and being a fisherman was busy in doing his job when he was captured by the police who made demand from him of an amount as an illegal gratification which he could not pay, therefore, complainant became annoyed and by taking summersault, has implicated him in this false case by foisting alleged contraband. He further submits that contraband allegedly shown to have been recovered from him was weighed along with wrappers; however, without wrappers, net weight of the same is 54 grams; hence, falls within category-B of the Control of Narcotic Substances (Sindh Amendment) Act, 2021. He next submits that police in order to strengthen rope of their false case have shown 64 grams only to make it punishable under category-B so that applicant may not get any concession in shape of his release on bail. He

further submits that applicant is not a previous convict or involved in any criminal case of like nature, therefore, being first offender, his case requires further inquiry.

4. Learned Addl. P.G, Sindh appearing for the State opposes the bail application on the ground that per quantity shown to have been recovered from possession of the applicant, it falls within ambit of second category of section "6-A" & (a) (ii), which involves with capital punishment. She; however, admits that per chemical report, net weight of the contraband is 54 grams which falls within the border line case.

5. **Heard arguments, record perused.** Before discussing merits or demerits of the case, it will be appropriate to go through amended section 6-A of the Control of Narcotic Substances (Sindh Amendment) Act, 2021, which reads as under;_

3. In the said Act, after section 6, the following new section shall be inserted:-

"6-A" Prohibition on manufacturing, selling, processing, extracting, preparation, purchasing, or delivering of psychotropic substance, controlled substance or narcotic drug. No person shall, extract, prepare, process, manufacture, sell, purchase, deliver on any terms whatsoever, transport or dispatch psychotropic substance, controlled substance or narcotic drug."

4. In the said Act, for section 9, the following shall be substituted:-

"9. Punishment for contravention of section 6, 6-A, 7 and 8. Whoever contravenes the provisions of sections 6, 6-A, 7 and 8 shall be punished with-

(a) imprisonment which may extend to three years but shall not be less than six months, or with fine upto rupees one lac but shall not be less than rupees fifty thousand, or with both if the quantity of psychotropic substance or controlled substance or narcotic drug category (i) is one hundred gram or less;

(b) imprisonment which may extend to seven years but shall not be less than three years and shall also be liable to fine upto rupees five lac but shall not be less than rupees one lac if the quantity of psychotropic substance or controlled substance or narcotic drug category (i) exceeds one hundred gram but does not exceed one kilogram, or if the quantity of narcotic drug category (ii) is fifty gram or less;

(c) death or imprisonment for life or imprisonment for a term which may extend to fourteen years and shall also be liable to fine which may be upto one million rupees, if the quantity of narcotic drug category (i) and (ii), psychotropic substance or controlled substance exceeds the limit specified in clause (b):

Provided that if the quantity of narcotic drug category (i), psychotropic substance or controlled substance exceeds ten kilograms or narcotic drug category (ii), exceeds two kilograms, the punishment shall not be less than imprisonment for life."

6. Per perusal of newly added section as per Amendment (*supra*) viz. 9-A, punishment for having possession of 100 grams or less is three years and shall not be less than six months or with fine up to Rs.100,000/- but shall not be less than Rs.50,000/- or with both. The recovery shown would fall under category (a)(i), therefore, does not fall under prohibitory clause of section 497 Cr.P.C. In the present case, contraband allegedly shown to have been recovered from the applicant is 54 grams which apparently falls under category (a) (i), and maximum punishment provided thereby is three years; thus, does not fall within prohibitory clause of section 497 Cr.P.C. Moreover, applicant as admitted by learned Addl. P.G, Sindh, is not previous convict or shown as habitual offender. The case has been challaned by the police and therefore, applicant is not required by the police for purpose of investigation or interrogation. It is settled law that every accused is presumed to be blue eyed boy of the law until and unless he is found guilty of the charge and law cannot be stretched upon in favour of the prosecution particularly at bail stage.

7. In the circumstances and in view of above, I am of the considered view that case against applicant falls within ambit of subsection 2 to section 497 Cr.P.C and requires further inquiry. Consequently, instant bail application is hereby allowed. Applicant **Noor Muhammad son of Kabir Ahmed**, shall be released on bail subject to furnishing his solvent surety in the sum of Rs.100,000/- (Rupees One Lac Only) and PR Bond in the like amount to the satisfaction of learned trial Court.

8. Needless to mention that the observation(s) made hereinabove is/are tentative in nature and shall not prejudice the case of either party during trial. However, the learned trial Court may proceed against the Applicant, if he is found misusing the concession of bail.

This Criminal Bail Application is disposed of in the terms indicated above.

JUDGE