

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No.1934 of 2020

Date *Order with signature of Judge*

For hearing of Bail Application.

19.01.2021

Syed Samiullah Shah, Advocate for the Applicant.
Ms. Rubina Qadir, Deputy Prosecutor General, Sindh.

ORDER

Muhammad Saleem Jessar, J:- Through this bail application, Applicant Sajad Ali seeks his release on post arrest bail in Crime No.197/2020 of P.S SIU, Karachi, under Section 6/9-C CNS. The applicant preferred his bail plea before the first forum, which was turned down by means of order dated 19.09.2020; hence, he has approached to this Court through this Application.

The police party headed by SIP Raja Nafees Gul of P.S SIU, Karachi was busy in search of absconders and after getting relaxation, when they reached at P.S Docks, Karachi, where they received spy information that a person who is narcotics transporter, is available at Lakri Godi (Wooden Godi) near Islami Scale, Machar Colony, Docks, Karachi along with contraband. Upon receipt of such information, complainant along with his subordinates proceeded towards pointed place and saw a person having blue coloured plastic shopper in his hand, was standing, therefore, he was arrested in presence of his subordinates namely H.C Abdullah and P.C Jamal. On inquiry, he disclosed his name to be present applicant. The shopper was unfolded, which was containing heroin as well as charas, same got weighed through digital scale, ultimately heroin powder became 300 grams whereas charas became 1050 grams. Thereafter, the contraband was sealed on the spot in presence of mashirs. The applicant, therefore, was arrested under Section 6 & 9 (c) of Control of Narcotics Substance Act, 1997 (the Act) and later they came to police station where instant case was registered against him on behalf of the state.

Learned counsel for the applicant submits that applicant has falsely been implicated by the police and the incident had not occurred as alleged. He next submits that on 30.07.2020 applicant was available in his home along with family inmates when police party raided in his home and taken away him in odd hours i.e. 11:30 A.M (night) and later they made demand of illegal gratification, which the applicant's family could not arrange; hence, complainant arrayed him in this false case by foisting alleged contraband against him. In support of his contention, he files certified copy of application dated 30.07.2020 addressed to worthy Chief Justice of this Court as well as police officers (available at page-47 of the Court file). He further submits that 1050 grams of charas; besides, 300 grams heroin powder is meager quantity, which is of border line case; hence, he may be granted bail. In support of his contention, he placed reliance upon cases of (i) *MAQSOOD ZAMAN Versus THE STATE (2011 YLR 2335)*, (ii) *ABDUL SATTAR Versus The STATE and others (2014 P.Cr.L.J 1335)* & (iii) *ATEEB UR REHMAN @ ATTI MOCHI Versus The STATE and others (2016 SCMR 1424)*.

On the other hand, learned Deputy P.G, Sindh opposes the bail application on the ground that beside charas, heroin has also been shown to have been recovered from his possession, therefore, case against applicant is not of border line, as claimed. She; however, submits that it will be appropriate for the applicant to proceed with the trial instead to press this bail application.

Heard arguments, record perused. No doubt, applicant is shown to have been arrested by the police on the spot along with alleged contraband but the plea taken by applicant in his defense to the effect that he was taken away by police from his home on 30.07.2020 is much earlier from the date of registration of FIR. In support of his plea, he has annexed documents issued by the trial Court, show that case against applicant requires further probe. Defense taken by the applicant is in shape of documents which are to be thrashed out by the trial Court after recording evidence of the parties. No doubt, police personels are good witnesses as good from the public; however, when the person was going to be charged for an offence which carries maximum punishment, then it was incumbent upon the police officer to associate independent person for witnessing the recovery

proceedings. The complainant is police officer, PWs are subordinates to him, therefore, false implication of applicant cannot be ruled out. The contraband shown to have been recovered is 1050 grams. Per available record perused with assistance of learned Deputy P.G, Sindh, reveals that alleged contraband was weighed along with polythene bags and if weighed without polythene bags, might have come to 1000 grams or less than that, in that eventuality case of the applicant would have fallen within the ambit of Section 9(b) of the Act. As alleged, the recovery was effected from applicant/accused while in shopper but there is nothing on record whether contraband was weighed after its removal from the shopper. Therefore, exact quantity of narcotics remained unascertained. If the recovery is marginally exceed 1000 grams, it is border line case and the Court seized of bail application, has to keep in mind minimum sentence likely to be awarded to the accused. Reliance can be placed upon case of **NOOR ALI KHAN Versus THE STATE (2003 MLD 1637)**.

In case of ATEEB UR REHMAN @ ATTI MOCHI (Supra) Hon'ble Supreme Court while discussing identical issue and granting bail to the petitioner has observed as under;_

".....we have noticed that when the petitioner was apprehended, 1014 grams of heroin was allegedly recovered from a shopper bag which he was carrying in his right hand. On Court query, the learned Additional Prosecutor General, after going through the recovery memo available on the file of police record, could not show that the recovered heroin was weighed along with the polythene bag or otherwise. If the recovered heroin was weighed along with the polythene bag, prima facie, the weight of the heroin without the polythene bag, if weighed, might have come to 1000 grams or less than that and in that eventuality, the case of the present petitioner would have fallen within the ambit of section 9(b) of the Control of Narcotic Substance Act, 1997. In this backdrop, the case of the petitioner becomes one of further enquiry falling within the purview of section 497(2) of the Code of Criminal Procedure."

The contraband, as stated by learned Deputy P.G, Sindh, has been sent to laboratory for its examination on 04.08.2020 i.e. with delay of about 2 days from recovery, which too makes case of the applicant within ambit of section 497(2) Cr.P.C. In the circumstances and in view of above discussion, I am of the view that applicant has made out a good prima facie case for his

release on bail. Consequently, instant bail application is hereby allowed. Applicant Sajad Ali son of Bacha Rehman 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.

It need not to iterate 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 will be found misusing the concession of bail.

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

JUDGE

Zulfiqar/P.A