

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No.17 of 2021

<i>Date</i>	<i>Order with signature of Judge</i>
-------------	--------------------------------------

For hearing of Bail Application.

02.03.2021

Mr. Bahri Kamal, Advocate for the Applicant.
Mr. Riasat Ali, D.P.P for the State.

ORDER

Muhammad Saleem Jessar, J:- Through this bail application, Applicant Gull Khan seeks his release on post arrest bail in Crime No.285/2020 of P.S Sharafi Goth, 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 11.12.2020; hence, he has approached to this Court through this Application.

The crux of the prosecution case as unfolded by complainant ASI Muhammad Mushtaq of P.S Sharafi Goth in his FIR dated 24.08.2020, are that police party headed by ASI Muhammad Mushtaq was on patrol duty in connection with detection of crime. When at about 1215 hours, they reached at Malir Nadi Bank near Sakhidad Baghicha (Garden) Landhi, Karachi, a suspected person was coming, who subsequently, was apprehended and on his body search Cannabis (Charas) weighing 1700 grams and cash of Rs.200/- were recovered from his possession. After making recovery and arrest, the complainant returned to P.S where he got registered instant case against him on behalf of State.

Learned counsel for the applicant submits that applicant is innocent and he works in the factory. When he was on the way, was apprehended by the police, who made demand of illegal gratification which he being labour could not pay, therefore, complainant being annoyed booked him in this

case by foisting contraband. He next submits that applicant had never been indulged in such activity or is previous convict. Learned counsel further submits that quantity of contraband foisted against him is meager one. In view of dicta laid down by the Honourable Bench of Lahore High Court in case of *GHULAM MURTAZA and another Versus THE STATE (PLD 2009 Lahore 362)*, case against applicant requires further inquiry. In support of his contention, he places reliance upon cases (i) *MUHAMMAD SAEED KHAN and others Versus The STATE (2016 P.Cr.L.J 730)*, (ii) *RAHEEL ABBAS Versus The State (2018 P.Cr.L.J 1307)*, (iii) *Shahzado Versus The State (SBLR 2018 Sindh 1295)*, (iv) *Makhdoom Sajjad Versus The State (SBLR 2014 Sindh 1514)*, (v) *Muhammad Hanif Versus The State (SBLR 2016 Sindh 29)*.

On the other hand, learned D.P.P for the State opposes the bail application on the ground that he was apprehended by the police along with contraband; besides, the sample sent by police to the chemical examiner, have been returned positive, therefore, he is not entitled for bail.

Heard arguments, record perused. After careful consideration of the contentions advanced by learned counsel for the parties and meticulous evidence available on record, it is admitted that contraband is weighing about 1700 grams and per dicta laid down under the case of Ghulam Murtaza (Supra), which was upheld in the cases of (i) *AMEER ZEB Versus STATE (PLD 2012 SC 380)* and (ii) *FAREED ULLAH Versus STATE (2013 SCMR 302)*, case in hand if considered in view of such framed policy, maximum punishment in instant case, at most, would be five years, hence; does not exceed limits of prohibitory clause of section 497 Cr.P.C. The position being so, makes it clear that instant case does not fall within the prohibitory clause; besides, the prosecution does not claim any case to have been registered against him prior to this incident and he is previous non-convict. The case has been challaned, all the PWs are from police department, therefore, question of tampering with the prosecution evidence or his absconding does not arise.

The upshot of above discussion is that applicant has made out a good prima facie case for his release on bail in terms of section 497(2) Cr.P.C. Consequently, instant bail application is hereby allowed. Applicant **Gull Khan son of Nek Muhammad**, 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