

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**Criminal Bail Application No.1221 of 2020**

---

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

---

*For hearing of Bail Application.*

**05.10.2020**

Mr. Mutwali Khan, Advocate for the Applicant.  
Ms. Rubina Qadir, Deputy Prosecutor General, Sindh.

**ORDER**

**Muhammad Saleem Jessar, J:-** Through this bail application, Applicant Asghar Ali seeks his release on post arrest bail in Crime No.626/2020 of P.S Shah Latif Town, 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 20.07.2020; hence, he has approached to this Court through this Application.

The crux of the prosecution case are that police party headed by ASI Shoukat Ali/complainant was busy in patrolling in their jurisdiction where they received information through their undercover to the effect that a person is standing opposite of Chokhandi graveyard, who is having charas in his possession for selling. Upon receipt of such information, complainant together with his subordinates rushed towards place of incident. When they reached at Chokhandi graveyard over the road leading towards Abdullah Goth, their undercover had indicated them towards a person who was sitting under the shadow of wall of graveyard. Due to non-availability of private persons, ASI Shoukat Ali, by making his subordinates as attesting witnesses/mashirs has apprehended person who was having a white coloured shopper in his right hand which was containing charas duly wrapped in yellow coloured plastic. On weighing on digital scale, it became 1500 grams. On further body search of the person, they secured a G-5 mobile phone, as well cash of Rs.1200/-, which too were taken into possession by the police. On inquiry, he disclosed his name to be present

applicant. Since applicant was found in possession of contraband, therefore, instant case against him was registered on behalf of the state.

After due investigation, case has been challaned, which is now pending for trial before the Court of Ist Additional Sessions Judge/MCTC, Malir Karachi (re-the State Versus Asghar Ali).

Learned counsel for the applicant submits that applicant has falsely been booked in this case as he has got dispute over the plot and complainant who being in league with mafia has implicated him so that applicant may surrender same plot. In support of his contention, he has placed on record photocopy of the agreement which he purchased from on Dholan of District Naushero Feroze, Sindh. He next submits that prior to this incident, his three sons have also been booked by same police station on 23.06.2020. He next submits that quantity shown to have been recovered from his possession is not huge one and in order to make case of prosecution beyond border line of 1000 grams police officer has shown its recovery to be 1500 grams. He furthers submits that per contents of the FIR, applicant allegedly was sitting over there for selling contraband; however, not a single person was found available around him presume to be a customer/purchaser of the same or any person of the locality has been produced and examined to believe that said person had allegedly purchased contraband/charas from the accused. In support of his contention, he places reliance upon the cases of (i) *MUHAMMAD SAEED KHAN Versus The STATE (2016 P.Cr.L.J 730)*, (ii) *TAJ ALI KHAN Versus THE STATE (2004 YLR 439)*, (iii) *BAHAWAL alias NAANG Versus THE STATE (2011 P.Cr.L.J 1200)* and (iv) *MUHAMMAD SHAFIQUE Versus The STATE (2016 P.Cr.L.J 1315)*.

Learned D.P.G, Sindh appearing for the State opposes the bail application on the ground that 1500 grams charas is huge quantity and is not beyond the border line as claimed by the applicant's counsel. She further adds that entire quantity of charas was sent to laboratory for chemical analysis and same has returned in positive. She, therefore, submits that applicant has got no good case for his release on bail. She; however, could not controvert the fact that not a single customer/purchaser has been

shown to have had charas from the applicant at particular date, time or place of the incident.

**Heard arguments, record perused.** Admittedly, the applicant has been shown to have been selling charas at the pointed place; however, not a single person was found available around him presume to be the purchaser/customer of the contraband even no other person was produced or examined by the I.O through which it could be deduced that he allegedly had purchased charas from the applicant which may substantiate the allegations leveled by the prosecution in the FIR. The quantity of 1500 grams charas has been exceeded to upper limit of 1000 grams only to make case of prosecution to be not of border line. In absence of any independent evidence/witness, the recovery allegedly shown to have been secured from possession of the accused needed further probe. As far as its quantity is concerned, it is yet to be established by the prosecution after recording evidence of the prosecution witnesses and is to be determined by the trial Court whether it would fall under class 'b' or 'c' of the Section 9 of Control of Narcotics Substance Act, 1997. In case of TAJ ALI KHAN (Supra), learned Bench of Peshawar High Court while dealing with identical situation has observed in para-3 of its judgment, as under;\_

*"3. Not only because the quantity of 500 grams marginally exceeds the upper limit of 1000 grams, therefore, being a border line case between clause 'B' and 'C' of section 9 and also because in the given circumstances whether maximum punishment of 14 years provided in the alternative would be awarded or not is also a point of discussion and further inquiry. Also from the record it is not established that he is a previous convict or involved in the same and similar offence in the past."*

No doubt, by virtue of Section 34 of the Act, application of Section 103 has been ousted; however, when police officer went upon to apprehend a person particularly when he had advanced information then it was incumbent upon police officer to associate some independent person(s) to believe that accused was captured by them from the scene of offence as claimed by the prosecution in its FIR. The case has been challaned and the applicant is no more required by the police for the purpose of investigation or interrogation. It is a settled principle of law that every accused would be presumed to be blue eyed boy of the law until and unless he may be found

guilty of the charge; and law cannot be stretched upon in favour of the prosecution particularly at bail stage. Mere heinousness of crime will not disentitle to an accused from concession of bail when ultimate conviction, if any, can repair wrong caused by the mistaken relief granted to him; however, if after lengthy trial, he is found innocent then golden days of his life he spent under incarceration cannot be repaired with.

The upshot of above discussion is that the case against applicant requires further inquiry within meaning of subsection 2 to Section 497 Cr.P.C. Consequently, instant bail application is hereby allowed; applicant Asghar Ali son of Soomar, shall be released on bail subject to furnishing his solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousands 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