

IN THE HIGH COURT OF SINDH AT KARACHI

Crl. Bail Application No.S-1260 of 2021

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.
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For hearing of bail application.

Date of hearing **12.08.2021**

Mr. Javed Ahmed Chatari Advocate for applicant.
Ms. Rubina Qadir Deputy Prosecutor General, Sindh.

ORDER

Mohammad Saleem Jessar, J; Through instant Crl. Bail application, applicant/accused Ehtesham Khan son of Nasir Khan seeks post-arrest bail in Crime No.118/2021, registered at Police Station Baldia Town, Karachi under Section 6/9(c) of C.N.S. Act, 1997. His earlier application for the same concession bearing No.2817 of 2021, was heard and dismissed by the learned Sessions Judge, Karachi West, vide order dated 17.06.2021.

2. The crux of the prosecution case is that on 10.06.2021, at about 1100 hours, Police party of Police Station Baldia Town headed by SIP Muhammad Hayat Solangi apprehended the applicant/accused while standing at Flour Mill Road in a street, Niazi Mohallah, Haji Qasim Colony, Baldia Town, Karachi and from his personal search recovered Charas weighing 1250 grams, which was sealed under proper memo of recovery and arrest recovery prepared on spot. Hence, this FIR.

3. Learned counsel for applicant contended that the applicant is innocent and recovery of huge quantity of alleged Charas shown to have been foisted upon him. He further contended on 09.06.2021 at about 09:00 p.m the applicant was present outside of his house meanwhile police of Police Station Baldia Town arrived there and took him, as such

the mother of applicant, proceeded to Police Station for inquiry and for release of his son but police demanded huge money as bribe for the purpose and on failure the applicant was booked in said crime, later on mother of the applicant moved an application in respect of his arrest. The case against applicant requires further inquiry hence, he is entitled to post-arrest bail. In support of his contentions, learned counsel placed reliance upon the cases of *Aya Khan and another v. The State (2020 SCMR 350)* and *Nasir Mehmood v. The State (2021 P.Cr.LJ 443)*

4. On the other hand learned Deputy Prosecutor General appearing for the State opposed the bail application on the ground that accused was arrested on spot and huge quantity of Charas was recovered from exclusive possession of present accused; that FIR was lodged without any substantial delay; that huge quantity of Charas cannot be easily foisted upon the present accused.

5. Heard arguments and perused the material available on record.

6. Admittedly, the place of recovery is thickly populated area people of vicinity remain available round O'clock; however, none from them was associated as witness in this case. No doubt applicability of Section 103 Cr.P.C is ousted under the Act, yet Police Officer went to charge a person for the offence which carries punishment in shape of his detention then it was incumbent upon the Police Officer to associate independent person for witnessing the recovery proceedings. In case of *Nasir Mehmood (Supra)* learned bench of this Court granted bail to the applicant from whose possession 2040 grams of contraband was recovered. In case of *Aya Khan (Supra)* the Honourable Supreme Court of Pakistan granted bail to the petitioner therein from whom 1100 grams of Heroin powder was recovered. It is now well settled law that benefit of doubt, if accrue even at bail stage could be extended to him. Since, the case has been challaned and the applicant is no more required by the Police for the purpose of investigation or interrogation. Under such circumstances, question of involvement of the applicant in alleged offence needs serious consideration in terms of further inquiry as envisaged under Sub-Section (2) of Section 497 Cr.P.C.

7. Needless to mention here that the observations made hereinabove are tentative in nature and shall not influence the trial Court for deciding

the case of the applicant on merits and in case applicant try to misuse the concession of bail in any manner, the trial Court shall be at liberty to cancel the bail after giving him the requisite notice.

8. Above are the reasons of my short order dated 12.08.2021

JUDGE

Zulfiqar/PA