

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.2347 of 2021

**Mst. Zulekhan Abdullah and
Ameer Gul**, applicants through:

Mr. Gul Hassan Hab, advocate

The State,
through:

Ms. Rubina Qadir, DPG along with
SI/IO Abdul Majeed Leghari, PS
Sohrab Goth, Karachi

Date of hearing:

30.12.2021

ORDER

Adnan-ul-Karim Memon, J. The applicants Mst. Zulekhan Abdullah and Ameer Gul son of Osafuddin, through the captioned bail application, has called in question, the rejection of their post-arrest Bail Application by the learned 1st Additional District Judge/Model Criminal Trial Court Malir, Karachi, vide order dated 21.10.2021, with the observations that quantity of 1400 and 1300 grams of *charas* is above the borderline, as settled by the Hon'ble Supreme Court.

2. At the outset, I asked learned counsel, that prima-facie the aforesaid tentative assessment of the record as opined by the learned trial court could not be brushed aside; and, what could be the malafide intention of the police to book the applicants in the contraband case.

3. Mr. Gul Hassan Hab, learned counsel for the applicants, has mainly contended that the father and a daughter has been booked in a narcotic case, having had 1400 grams and 1300 grams of *charas* respectively in their hands; with a further assertion that nothing has been recovered from their possession; that the alleged recovery is foisted upon them on the premise that the applicants had moved an application dated 04.05.2020 to the competent authority, against the SHO PS Sohrab Goth, for the protection of their life and liberty, however, no such action was taken in time by the competent authority, since 04.05.2020, in result, the police of PS Sohrab Goth, in their nefarious design succeeded in lodging a false case of narcotics against the applicants on 25.09.2021. Learned counsel further pointed out that in the subject FIR, the police has shown to have been accompanied by a lady searcher (unknown name), however, the police Roznamcha entry dated 25.09.2021 of PS Sohrab Goth explicitly disclosed no name of such lady searcher with the police who were on patrolling duty, such aspect of the case was not considered by the learned trial Court and rejected the bail plea of the applicants on the aforesaid analogy. Learned counsel further pointed out that a father and a daughter can't have the

narcotics at the same date, time, and place to wait for the police to come forward and arrest them. Besides that, the SHO Abdul Rasool Siyal was intimidating the family of the applicants and had a nefarious design and evil eye on the daughter of applicant Bibi Saeeda, however, the learned trial Court discarded this plea and believed the story of the police without assigning any reason. He further pointed that the false implication of the applicants in the present case cannot be ruled out, therefore the applicants are entitled to concession of the post-arrest bail. Learned counsel referred to various documents attached with the memo of bail application and submitted that the case of the applicants is on borderline as settled by the Hon'ble Supreme Court in its various pronouncements, thus post-arrest bail could be granted in such a situation. He prayed for allowing the instant bail application.

4. Learned DPG has supported the stance of the prosecution and prayed for the dismissal of the bail application. In support of her contentions, she relied upon the case of *Bilal Khan v. The State*, **2021 SCMR 466**, and argued that there is no enmity between the parties, therefore, there is no reason with this Court to discard the plea of prosecution; that the quantity of Charas 1400 and 1300 grams is above the borderline wherein the bail of accused can be refused.

5. I have heard the learned counsel for the parties and peruse the material available on record and the case-law cited at the bar.

6. Tentative assessment of record reflects that the applicants had already raised their voice of concern by moving application dated 04.05.2020 to the competent authority against the highhandedness of SHO PS Sohrab Goth concerning having an evil eye on Bibi Saeeda, such application was duly received by the office of the Deputy Inspector General of Police Karachi East vide entry No.21973WCP dated 04.05.2020. The record further reflects that Sub-Inspector Javed Arain of PS Sohrab Goth was on patrolling duty on 25.09.2021 and in the meanwhile, he received spy information that the applicants are selling charas, he rushed to the place of incident and searched the lady with the help of lady constable and recovered the aforesaid contraband from the shopper bag in their hand, when inquired about the name of the lady searcher, the Investigating Officer present in Court has submitted that no name of lady constable has been mentioned in the FIR. I again asked whether he can produce such an entry when they left the police station for patrolling, he referred to entry No.77 of PS Sohrab Goth dated 25.9.2021; and on perusal, the name of the lady constable does not transpire in the said entry. Primarily, he has no reply to the said factum for the reasons best known to him. However, he submitted that Mashirnama of the arrest does disclose the name of lady searcher Nazish.

7. Prima facie, the aforesaid documents i.e. FIR, police diary, and Mashirnama of arrest and recovery are not in line with each other. At this stage, learned DPG

submitted that deeper appreciation of the case is not permissible at the bail stage. Be that as it may, I am of the tentative view, it is almost beyond the imagination that at the same time, father was having 1300 grams charas in shopper bag and daughter 1400 grams charas in another shopper bag and waited for the police to come and recover the same from their hands, besides that no purchaser of the alleged charas been shown either in the FIR, memo of arrest or any document of the police file.

8. The aforesaid factum prima facie requires further inquiry into the guilt of the applicants as to whether the police arrested the applicants at the pointed place with the narcotics or otherwise; as it is for the trial Court to see pro and contra for the simple reason that the applicants have specifically pleaded innocence by referring their application dated 04.5.2020 against the SHO PS Sohrab Goth.

9. The Honorable Supreme Court in the recent judgment in bail matters has held that judicial protection is based on equity. Primarily, the remedy of concession of bail is meant to save innocent from false implication, rigors of trial, and humiliation. On this proposition, I seek guidance from the decision of the Honorable Supreme Court rendered in the case of Gulshan Ali Solangi and others v. The State through P.G. Sindh (2020 SCMR 249).

10. I am of the tentative view that the case of the applicants does fall within the ambit of “further inquiry” falling within the ambit of section 497(2) Cr.P.C.

11. As a consequence of the facts and circumstances surfaced on the record, I am persuaded to grant post-arrest bail to the applicants under Section 497 Cr.P.C. Resultantly, instant Criminal Bail Application No. 2347/2021 arising out of FIR No. 795/2021, under section 9(c) CNS Act, 1997 registered at P.S Sohrab Goth is hereby allowed, subject to their furnishing solvent surety in the sum of Rs.100,000/- (Rupees one hundred thousand) each and PR Bond in the like amount to the satisfaction of the Trial Court.

12. These are the reasons for my short order dated 30.12.2021, whereby the applicants were admitted to post-arrest bail in the aforesaid crime. However, the trial Court is directed to conclude the trial within two months from the date of receipt of this order and submit a compliance report through MIT-II of this Court.

JUDGE