

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.2350 of 2021

Syed Muhammad Farhan,
applicant through:

Ms. Khadija Kulsoom, advocate

The State,
through:

Ms. Rubina Qadir, DPG along with SI
Muhammad Ramzan, PS Saudabad,
Karachi

Date of hearing:

29.12.2021

Date of order:

07.01.2022

ORDER

Adnan-ul-Karim Memon, J. Through this bail application, applicant Syed Muhammad Farhan seeks bail after arrest in Crime No.473/2021, registered under Section 6/9-C of the CNS Act, 1997 at PS Saudabad, Karachi.

2. Facts of the case as per FIR are that on 29.9.2021, when the complainant/SIP Arshad Hussain was busy patrolling for prevention of crime, he received spy information that one person was selling narcotics substance at Awami Kanta, National Highway, Saudabad, Malir Colony, Karachi. On receiving such information, they proceeded at the pointed place and found one person in suspicious condition, to whom they apprehended. On inquiry, he disclosed his name as Syed Muhammad Farhan son of Syed Muhammad Yousuf. On personal search of accused, charas weighing 2200 grams, heroin weighing 200 grams, ice weighing 130 grams, and qandhanian weighing 84 grams were recovered. On further personal search, they also recovered a cash amount from the said accused. The accused and case property was brought to the police station and FIR of the incident was lodged accordingly.

3. Ms. Khadija Kulsoom learned counsel for the applicant contended that the applicant is innocent and the story narrated in the FIR is false and fabricated, which is not believable; that the complainant has made no efforts to associate any private witness from public, which creates serious doubt in the prosecution story; that the place of incident is a thickly populated area, but no private witness has been cited by the police at the time of alleged recovery, which is in clear violation of Section 103 Cr.P.C., She insisted that it is a borderline case between sub-clauses (b) and (c) of section 9 CNSA and punishment is always to be awarded for the offense in commensuration with the quantum of recovery of contraband, therefore, the quantum of punishment has to be ascertained by the Trial Court as such, the applicant is entitled for bail; that both the mashirs are subordinate of the complainant, therefore, the false implication of applicant/accused cannot be ruled out; that applicant/accused is confined in jail since his arrest and is no more required for further investigation,

therefore, he is fully entitled to grant of bail. Learned counsel, therefore, prayed for allowing instant bail application.

4. Ms. Rubina Qadir learned DPG, representing the State contended that charas weighing 2200 grams, heroin weighing 200 grams, ice weighing 130 grams, and qandhanian weighing 84 grams were recovered from the possession of the applicant on the spot, for which he could not offer any plausible explanation. Learned DPG, therefore, contended that this bail application merits no consideration and is liable to be dismissed.

5. I have heard learned counsel for the applicant and learned D. P.G. and have carefully examined the material available on record including the test report dated 11.10.2021 submitted by the Chemical Examiner.

6. It appears that the present applicant is booked for the offenses punishable under Section 9-C C.N.S. Act, 1997. Learned counsel for the applicant firstly argued that **Ice**, is not covered under the provisions of Act 1997 and its schedule at serial No. 47 is the Psychotropic substance covered under the Act, 1997 and Rules framed thereunder. But from the perusal of Schedule, the said **Methamphetamine** is shown at Sr. No. in the table, specifying small and commercial quantity for determining the quantum of punishment also.

7. Even, I have perused the aforementioned test report dated 11.10.2021, the gross weight and net weight of Methamphetamine was 130 grams. The Chemical Examiner opined the sample as Methamphetamine/Ice allegedly recovered from the applicant falls within category (i) specified in Clause (s) of Section 2 of the Act of 1997 substituted through The Control of Narcotics Substance (Sindh Amendment) Act, 2021, and the net weight 1042 thereof is more than double of the maximum limit of one kilogram (1,000 grams) prescribed in Clause (b) of Section 9 *ibid*. Besides that **charas weighing 2200 grams, heroin weighing 200 grams, and qandhanian weighing 84 grams** were also recovered from the applicant; therefore, this is not a borderline case between Clauses (b) and (c). The offense alleged against him falls within the prohibition contained in Section 51 of the Act of 1997 and Section 497 Cr.P.C. The punishment of the offense falling under clause (c) is death or imprisonment for life or imprisonment for a term that may extend to fourteen years. Thus, the prohibition contained in Section 51 of the Act of 1997 shall apply to this case, and it also falls within the prohibitory clause of Section 497 Cr.P.C.

8. In the present case said alleged quantity of different kinds of drugs as discussed supra were recovered from the conscious possession of the applicant; that the chemical reports dated 11.10.2021 of all drugs i.e. Ice, heroin, and charas as discussed supra support the prosecution version and looking to the Mashirnama

dated 29.09.2021 and statement recorded under section 161 Cr. P.C, prima facie connects the present applicant with the alleged offense. It is also required to be considered here the large interest of society, in such kind of case. Therefore, the applicant is not entitled to the concession of post-arrest bail and there appears to be no exception to this rule in the facts and circumstances of the instant case.

9. The above view is fortified by *Muhammad Noman Munir v. The State and another*, (2020 SCMR 1257), and *Bilal Khan v. The State*, (2021 SCMR 460). In the former case, 1,380 grams of cannabis and 07 grams of heroin were recovered from the accused, and in the latter case, the quantity of recovered Ice was 1200 grams. In both the said authorities, the concession of bail was declined by the Hon'ble Supreme Court by holding that the prohibition embodied in Section 51 of the Act of 1997 was applicable thereto. It was also held in *Muhammad Noman Munir* (supra) that non-association of a witness from the public and his non-cooperation was usual conduct symptomatic of social apathy towards civic responsibility; and, even otherwise the members of the contingent being functionaries of the State are second to none in their status, and their acts statutorily presumed, prima facie, were *intra vires*.

10. Red-handed arrest of the applicant with a considerable quantity of lethal contraband, confirmed by a positive Chemical report prima-facie connects the applicant with the alleged crime. Applicant's claim of false implication is an issue that cannot be attended without going beyond the scope of tentative assessment, a venture prohibited by law.

11. The guilt or innocence of the applicant is yet to be established as it would depend on the strength and quality of the evidence produced / to be produced by the prosecution and the defense before the trial Court. Therefore, it is clarified that the observations made herein are tentative which shall not prejudice the case of either party or shall influence the trial Court in any manner in deciding the case strictly on merits under law.

12. In view of the above, the instant bail application is dismissed with direction to the Trial Court to conclude the trial of the subject case within two (02) months strictly under the law. If the trial is not concluded within the stipulated time at least the complainant must be examined; and, strong reasons shall be put forward if the trial is not concluded. A report shall be submitted to the MIT-II of this Court. Let this order be communicated to the trial Court for compliance.

JUDGE