

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No.2407 of 2021

Date *Order with signature of Judge*

For hearing of Bail Application.

12.01.2022

Syed Lal Hussain Shah, Advocate along with Applicant (on bail).
Mr. Talib Ali Memon, Assistant Prosecutor General, Sindh along with ASI
Faqeer Muhammad of P.S Kalakot, Karachi.

ORDER

Muhammad Saleem Jessar, J:- Through this application, applicant Mst. Rukhsana seeks her admission on pre-arrest bail in Crime No.478/2021 of Police Station Kalakot, Karachi, under Section 6/9-C CNS Act, 1997. The case after thorough investigation has been challaned by the police which is now pending for trial before the Court of 1st Addl. Sessions Judge/MCTC, Karachi (South) vide Sessions Case No.Nil (re-the State Versus Mst. Rukhsana). The applicant preferred her plea for anticipatory bail before the Court of Sessions wherefrom it was assigned to 1st Addl. Sessions Judge, Karachi (South), who after hearing the parties, declined her request vide order dated 21.12.2021; hence, instant bail application has been maintained.

2. The crux of the prosecution case as unfolded by complainant/ASI Qaisar Mahmood that on 12.12.2021 he along with his subordinates was busy in area patrolling when they received a spy information to the effect that one gent as well as a lady are selling some contraband in Benazir Bhutto Shaheed Medical Girls College, Lyari, Karachi. Upon receipt of such spy information, they proceeded to the pointed place and found a person as well as a lady, who were standing. They; however, succeeded to apprehend one accused who subsequently disclosed his name to be Muhammad and from his possession a plastic shopper bag containing ice and heroine was recovered along with Rs.700/-. As far as lady was concerned, co-accused disclosed her name to be the present applicant. After completion of legal formalities, police have submitted challan before the Court of law having jurisdiction which is now pending for trial before the Court of 1st Addl. Sessions Judge, Karachi (South).

3. ASI Faqeer Muhammad of P.S Kalakot, Karachi, present and submits report, which is hereby taken on record.
4. Learned counsel for the applicant submits that the applicant has falsely been implicated by the police and she has got no nexus or concern with co-accused, to whom she has been alleged, he had implicated her by disclosing her name. He further submits that the quantity allegedly shown to have been thrown away by her was not only small but meager one and could have been taken away by her at the time of alleged incident. He further submits that the applicant being lady has falsely been implicated by the police and if the contents of the FIR to the extent of disclosing her name by co-accused may be presumed to be true even then she cannot be held responsible for the offence allegedly shown to have been committed by her as the alleged contraband was not secured from her physical possession. In support of his contention, he has placed reliance upon the cases of (i) *JAMAL-UD-DIN alias ZUBAIR KHAN Versus THE STATE* (2012 SCMR 573), (ii) *ASLAM PERVEZ Versus THE STATE* (2007 MLD 263), (iii) *JIANDAL SHAH and another Versus THE STATE* (2005 P.Cr.L.J 259), (iv) *ANWAR Versus THE STATE* (2005 MLD 950), (v) *THE STATE through Deputy Director Anti-Narcotic Force, Karachi Versus Syed ABDUL QAYUM* (2001 SCMR 14) and (vi) *ATEEB UR REHMAN @ ATTI MOCHI Versus The STATE and others* (2016 SCMR 1424).
5. On the other hand, learned Assistant P.G, Sindh appearing for the State, opposes the bail application on the ground that provisions of Article 43 of the Qanoon-e-Shahadat Order 1984 does not apply to this case as she herself had thrown the contraband at the time of making her escape good. He; however, could not controvert the fact that quantity of contraband allegedly shown to have been thrown by her is meager one and could have easily been taken away by her instead of throwing the same.
6. **Heard arguments and perused record.** No doubt, the applicant has been named in FIR; however, allegation against her as shown is she had thrown away contraband and made her escape good. It is also quite unbelievable that the police who were less with automatic weapons, have succeeded to apprehend male accused while the applicant being lady had made her escape good by throwing alleged contraband. Since the alleged contraband was not secured from her physical possession nor any customer or consumer was examined or captured by the police to believe, applicant and co-accused were allegedly selling the contraband, therefore, application of section 9 of the Act requires evidence. In absence of any direct or indirect evidence, she cannot be held responsible for the offence as alleged. In case of *Anwar Versus The State* (Supra), Divisional Bench of this Court while granting bail to the applicant has held as under;_

“Admittedly the narcotic substance viz. Chars was not recovered from the actual possession of the applicant and according to the contents of the F.I.R. the man has escaped from the scene as the police could not arrest him. It is yet to be ascertained as to whether the applicant was actually possessing the narcotics. In the previously registered case F.I.R. No.115 of 2004 the applicant was implicated on the basis of statement of co-accused. Under the circumstances, the case against the applicant appears to be of further inquiry.”

7. After furnishing her surety before this Court, the applicant has also joined trial proceedings which as per statement of the learned counsel, has been adjourned to 24.01.2022; hence, she is no more required by the police for the purpose of investigation or interrogation. The accusation against the applicant is yet to be determined by the trial Court after recording evidence of the prosecution witnesses and at this juncture I am of the opinion that prima facie a good case for further inquiry within the meaning of sub-section 2 to section 497 Cr.P.C, is made out. Consequently, instant bail application is hereby allowed; interim bail granted earlier to applicant **Mst. Rukhsana w/o Abdul Raheem** on 28.12.2021 is hereby confirmed on same terms and conditions.

8. Before parting with this order; however, it is clarified that the reasoning given in this order are tentative in nature and will have no effect whatsoever in any manner upon the merits of the case.

9. Applicant present before the Court is directed to continue her appearance before the trial Court without negligence and in case she may misuse the concession or may temper with the prosecution's evidence then the trial Court is competent to take legal action against her as well to her surety in terms of Section 514 Cr.PC. Trial Court is also hereby directed to make necessary arrangements for securing attendance of the prosecution witnesses and conclude the trial within shortest possible time under intimation to this Court through MIT-II.

10. Let copy of this Order be communicated to trial Court through learned Sessions Judge, concerned. Learned MIT-II to ensure compliance.

JUDGE

Zulfiqar/P.A