

**IN THE HIGH COURT OF SINDH, AT KARACHI**  
**Cr. Bail Application No. 2382of 2021**

Applicant : Nadeem s/o Muhammad Bux, through  
Mr. Akhter Hakeem Kalwar, Advocate

Respondent : The State, through Mr. Muntazir Mehdi,  
Additional Prosecutor General, Sindh

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Date of hearing : 24.01.2021

Date of order : 24.01.2021

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**ORDER**

**ZAFAR AHMED RAJPUT, J:-** Applicant/accused Nadeem s/o Muhammad Bux being abortive to get the concession of post-arrest bail from the Court of Model Criminal Trial Court / 1<sup>ST</sup> Additional Sessions Judge Malir, Karachi, vide order dated 01.12.2021, through this application seeks the same concession from this Court in Crime/FIR No. 445 of 2021, registered under Sections 6/9(c) of the Control of Narcotic Substances Act, 1997 (hereafter the "Act") at Police Station Memon Goth, Karachi.

2. Allegation against the applicant is that, on 29.10.2021 at 10:00 a.m., he was arrested by a police party headed by SIP Naimatullah Khuhawar on being found in possession of 2336 grams of charas at near Fazal Bagh, Memon Goth, Karachi, for which he was booked in the afore-mentioned F.I.R.

3. The learned counsel for the applicant has mainly contended that the applicant is innocent and he was falsely implicated in this case after being arrested from his house one day prior to lodging of the F.I.R., for that his mother-in-law moved applications to higher authorities on the very next day; that the place of incident is located in a thickly population area, but police failed to associate any private mashir to witness the alleged recovery; hence, the same is in violation of section 103, Cr. P.C. rendering the alleged recovery doubtful and benefit thereof always goes in favour of an accused even at bail stage; hence, the applicant is entitled for the concession of bail.

4. On the other hand, learned APG has vehemently opposed this application on the ground that the applicant was arrested on being found in possession of huge quantity of charas; that the complainant attempted to make the private persons as mashirs but they refused; that the applicant has not alleged any enmity with the police officials for implicating him falsely in this case; that the applicant is also involved in a crime of similar nature bearing F.I.R. No. 82 of 2020, registered at the same police station.

5. I have given due consideration to the arguments advanced by both the parties and also perused the material available on record.

6. It reelects from the record that on 28.10.2021 charas weighing 2336 grams was recovered from the possession of the applicant, which was sealed on the spot and sent to Chemical Analyzer for chemical examination. Positive report of Chemical Analyzer brings the case of the applicant within the scope of prohibition, contemplated by Section 51 of the Act. As per F.I.R., private persons did not cooperate to become witnesses in the case. Even otherwise Section 25 of the Act excludes the applicability of Section 103, Cr. P.C.; therefore, association of witnesses from the public is not mandatory in the cases registered under the Act. Applicant's claim with regard to his false implication and moving of such applications to higher authorities after lodging of F.I.R. is an issue that cannot be attended without going beyond the scope of tentative assessment, an attempt prohibited by law. The huge quantity of charas allegedly recovered from the possession of the applicant can have devastating effect on the society. Prime facie, sufficient material is available on record to connect the applicant with the commission of alleged offence and no case for granting bail to him on the ground of alleged benefit of doubt has been made out; hence, instant bail application is dismissed, accordingly.

7. Needless to mention here that the observations made hereinabove by this Court are tentative in nature and the same shall not influence the trial Court while deciding the case of applicant on merit.

JUDGE

Athar Zai