

IN THE HIGH COURT OF SINDH, AT KARACHI
Cr. Bail Application No. 2444 of 2021

Applicant : Muhabbat Khan Jamali s/o Rahim Khan,
Through Mr. Qazi Inamullah, Advocate

Respondent : The State, through Ms. Rahat Ahsan,
Additional Prosecutor General, Sindh

Date of hearing : 26.01.2021
Date of order : 26.01.2021

ORDER

ZAFAR AHMED RAJPUT, J:- Applicant/accused Muhabbat Khan Jamali s/o Rahim Khan Bux being abortive to get the relief of post-arrest bail in Sessions Case No. 2780 of 2021 from the Court of Model Criminal Trial Court / 1st Additional Sessions Judge Malir, Karachi vide order dated 23.11.2021, through instant application strives for the same relief from this Court in Crime No. 582 of 2021, registered under Sections 6/9(c) of the Control of Narcotic Substances Act, 1997 (*hereafter the "Act"*) at Police Station Steel Town, Karachi.

2. As per F.I.R., on 23.08.2021 at 0030 hours, SIP Mian Muhammad Hasnain of P.S. Steel Town was on patrolling duty in his jurisdiction along with his subordinate staff. On spy information, he got a car bearing registration No. AQQ-008 stopped wherein (1) Ghulam Abbas (*driver*) and a lady (2) Mst. Hameeda w/o Irshad were sitting on front seats while (3) Muhabbat Khan Jamali (*applicant*) and (4) Irshad s/o Nazeer Ahmed were seated on rear seat. On search, police party recovered a plastic bag lying on the rear side floor of the car containing 20 packets of charas, total weighing 20.570 Kgs., for which accused persons were 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 has falsely been implicated in this case by the police; that nothing incriminating material was recovered from the possession of the applicant and the alleged charas has been foisted upon him; that even the

applicant is not the owner of the alleged car; that there are major contradictions regarding alleged recovery of charas in the statements of prosecution witnesses and contents of memo of arrest and recovery, which has rendered the entire prosecution case doubtful; that National High Way Link Road is a thickly populated area and despite prior information, police failed to associate any private mashir to witness the alleged recovery; hence, the alleged recovery of charas being in violation of section 103, Cr. P.C. is highly doubtful rendering the case as of further inquiry; that co-accused Mst. Hameeda has already been admitted on bail by the learned trial Court vide order dated 22.10.2021; hence, the applicant is also entitled for the concession of bail on the grounds of further inquiry and rule of consistency.

4. On the other hand, learned APG has vehemently opposed this application on the grounds that the applicant was arrested on being found in possession of huge quantity of charas; that due to odd hours of the night, no private person was available to witness the alleged recovery; that the applicant has not alleged any enmity with the police officials for his so-called false implication in the case.

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

6. The record indicates that on the day of his arrest, the applicant was travelling in the aforementioned car along with three other accused persons. The recovered charas was lying as per F.I.R. in a plastic bag on the floor of rear seat. The learned counsel for the applicant has pointed out that as per memo of arrest and recovery the alleged charas was laying on rear seat. Such contradiction can be explained by the P.Ws in their evidence. The recovered charas 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

were not available at the relevant time on the spot. 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 is an issue that cannot be attended without going beyond the scope of tentative assessment, an attempt prohibited by law.

7. The lady co-accused has been admitted on bail by the Court below considering the fact that she was sitting on front seat, while charas was recovered from rear seat of the car and hence, there is nothing on record to prove that she was having conscious knowledge of the alleged contraband substance. The sitting position of the present applicant was different; he was sitting on the rear seat of the car where contraband substance was lying. The applicant has not denied his presence in the car. On the contrary, he has alleged in his application that the alleged recovery was not made from his direct or exclusive possession but from the place of foot rest of the rear seat of the vehicle. Even so, it was in his conscious knowledge that the charas was lying in the car. The huge quantity of charas allegedly recovered from the possession of the applicant can have devastating effect on the society. Prima 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 further inquiry and rule of consistency has been made out; hence, instant bail application is dismissed, accordingly.

8. 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