

IN THE HIGH COURT OF SINDH, AT KARACHI
Cr. Bail Application No. 2277 of 2021

Applicant : Anayatullah alias Sheena s/o Mir Nawaz,
through Mr. Muhammad Ali Waris Lari,
advocate

Respondent : The State, through Mr. Talib Ali Memon,
Assistant Prosecutor General, Sindh

Date of hearing : 27.01.2021
Date of order : 27.01.2021

ORDER

ZAFAR AHMED RAJPUT, J:- Applicant/accused Anayatullah alias Sheena s/o Mir Nawaz being abortive to get the concession of post-arrest bail from the Court of Additional Sessions Judge-VIII, Karachi-West/MCTC, vide order dated 11.11.2021, through this application seeks the same concession from this Court in Crime/FIR No. 345 of 2021, registered under Sections 6/9(c) of the Control of Narcotic Substances Act, 1997 (hereafter the "Act") at Police Station Shershah.

2. Allegation against the applicant is that, on 03.13.2021 at 12:30 p.m., he was arrested by a police party headed by SIP Naseer Muhammad Magsi on being found in possession of 1800 grams of charas at Muhammadi Road, Street No.23, Sufi Hotel, Shershah, Karachi, for which he was booked in the aforesaid F.I.R.

3. The learned counsel for the applicant has mainly contended that the applicant is innocent and has falsely been implicated in this case after being taken to police station from road side, where on failure to meet with the demand of SIP Naseer Muhammad, he was detained in the lock-up; that the place of incident is located in a highly thickly population area, but police failed to associate any private mashir to witness the alleged recovery, which fact alone creates reasonable doubt in a prudent mind about the guilt of the applicant and benefit thereof always goes in favour of the applicant even at bail stage; hence, the applicant is entitled for the concession of bail; that the applicant is behind the bar since the day of his arrest and there is no likelihood of concluding his trial in

near future, hence he shall remain in jail for a long time for no purpose. In support of his contentions, learned counsel has relied upon the case of *Nasir Mahmood v. The State* (2021 P Cr. L J 443) and *Ali Hassan alias Hasan v. The State* (2014 YLR 188).

4. On the other hand, learned APG has resisted grant of bail to the applicant on the ground that he 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.

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

6. Perusal of the record shows that charas weighing 1800 grams was recovered from the possession of the applicant, which was sealed on the spot and sent to Chemical Analyzer for chemical examination on the very next day. 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. It has been observed by the Apex Court in the case of *Muhammad Noman Munir v. The State and another* (2020 SCMR 1257), while rejecting bail plea in a case of 1380 grams of cannabis with 07 grams of heroin, as under;

“Insofar as non-association of a witness from the public is concerned, people collected at the scene, despite request abstained to assist the law and it is so mentioned in the crime report itself, a usual conduct symptomatic of societal apathy towards civic responsibilities. Even otherwise, the members of the contingent being functionaries of the State are second to

none in their status, *with their acts statutorily presumed, prima facie, as intra vires.*

7. 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. 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 benefit of doubt 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

Athar Zai