

**IN THE HIGH COURT OF SINDH, AT KARACHI**  
**Cr. Bail Application No. 2381 of 2021**

Applicant : Muhammad Arif s/o Muhammad Hanif,  
through Mr. Sardar Sheraz Anjum, Advocate

Respondent : The State, through Ms. Rahat Ehsan,  
Additional Prosecutor General, Sindh  
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Date of hearing : 02.02.2022  
Date of order : 02.02.2022  
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**ORDER**

**ZAFAR AHMED RAJPUT, J:-** Applicant/accused Muhammad Arif s/o Muhammad Hanif being failed to get the concession of post-arrest bail in Cr. Bail Application No. 3562/2021 from Model Criminal Trial Court/1<sup>st</sup> Additional. Sessions Judge Malir, Karachi vide order, dated 28.08.2021, through this application seeks the same concession from this Court in Crime/FIR No. 487 of 2021, registered under Sections 6/9(c) of the Control of Narcotic Substances Act, 1997 (the "Act") at P.S. Steel Town, Karachi.

2. Allegation against the applicant is that, on 06.07.2021 at 12:45 a.m., he was arrested by a police party headed by SIP Mian Muhammad Hasnain on being found in possession 1510 grams of charas at Wireless Gate, Parking Area Road, Steel Town, for which he was booked in the aforesaid F.I.R.

3. Learned counsel for the applicant claims innocence and false implication of the applicant in the instant case by the police in order to show efficiency. According to him, alleged charas has been foisted upon the applicant and recovery thereof is doubtful being in violation of section 103, Cr. P.C, entitling the applicant to have favor thereof at bail stage. In his assumption, alleged recovery is a borderline case between clause (b) & (c) of section 9 of the Act.

4. On the other hand, recovery of the charas in huge quantity and red-handed arrest of the applicant; non-availability of private persons to act as mashirs due to mid-night hours and non-existence of enmity with police party are the grounds of learned APG for the rejection of the application.

5. Heard. Record perused.

6. It reflects from the record that the alleged recovered charas 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. 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. With no stretch of imagination recovery of 1510 grams charas can be considered as borderline case. 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

with the prosecution 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 and/or borderline case has been made out; hence, instant bail application is dismissed, accordingly.

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

JUDGE

*Athar Zai*