

**IN THE HIGH COURT OF SINDH, AT KARACHI**  
**Cr. Bail Application No. 2399 of 2021**

Applicant : Sikander s/o Gul Rang Khan,  
Through Mr. Sardar Javed, advocate

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

-----

Date of hearing : 02.02.2022  
Date of order : 02.02.2022

-----

**ORDER**

**ZAFAR AHMED RAJPUT, J:-** Applicant/accused Sikander s/o Gul Rang Khan being abortive to get the relief of post-arrest bail in Cr. Bail Application No. 4505 of 2021 from the Court 1<sup>st</sup> Additional Sessions Judge (Model Criminal Trial Court) Karachi-South vide order dated 13.12.2021, through instant application strives for the same relief from this Court in Crime No. 346 of 2021, registered under Sections 6/9(c) of the Control of Narcotic Substances Act, 1997 (*hereinafter "Act of 1997"*) at Police Station Garden, Karachi.

2. As per F.I.R., on 24.11.2021 at 1730 hours, ASI Ghulam Mustafa of P.S. Garden during patrolling in his area, along with his subordinate staff, reached Mirza Adam Khan Road, Jhandda Chowk, Garden West where he apprehended the applicant riding a motorcycle without number, and recovered 55 grams crystal and 17 grams heroin, for which he was booked in the aforesaid F.I.R.

3. The learned counsel for the applicant mainly contends that the applicant is innocent and 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 narcotic drugs have been foisted upon him by the police after being arrested from his house; that under sections 21 & 22 of the Act of 1997, ASI is not empowered to seize narcotic drug, make search and arrest a person; hence, the arrest of the applicant is in violation of law; that the place of alleged arrest and recovery is located in a thickly populated area but police failed to associate any

private mashir to witness the alleged recovery; therefore, the alleged recovery of narcotic drug being in violation of section 103, Cr. P.C. is highly doubtful rendering the case as of further inquiry entitling the applicant for the concession of bail.

4. On the other hand, learned APG vehemently opposes this application on the grounds that the applicant was arrested on being found in possession of alleged narcotic drugs; that the arrest of the applicant and seizure of narcotic drugs is in accordance with law; that the complainant attempted to make the private persons as mashirs but they refused; that the applicant has previous history of indulging in such like case.

5. Heard. Record perused.

6. Crystal is a new anathema and social abuse in our society. As per publication of National Drug Intelligence Centre, Washington available at [www.usdoj.gov/ndic](http://www.usdoj.gov/ndic), crystal methamphetamine (*crystal meth is short for methamphetamine*) is a colorless, odorless form of d-methamphetamine, a powerful and highly addictive synthetic (*man-made*) stimulant. Like powdered methamphetamine (*another form of d-methamphetamine*), crystal methamphetamine is abused because of the long-lasting euphoric effects it produces. It, however, typically has a higher purity level and may produce even longer-lasting and more intense physiological effects than the powdered form of the drug. The most common names for crystal are ice and glass. It is smoked using glass pipes similar to pipes used to smoke crack cocaine. It is also swallowed and may be injected with a needle and taken by snorting it (*inhaling through the nose*). Crystal is increasingly gaining in popularity as a "party" and "club" drug.

7. Methamphetamine is defined under Clause (r-i) of Section 2 of the Control of Narcotic Substances (Sindh Amendment) Act, 2021 (*hereinafter "Act of 2021"*) as "*an addictive neurotoxic stimulant which is used as a recreational drug, having*

chemical formula C<sub>10</sub> H<sub>15</sub> N and includes ICE, Meth and Crystal". Under Clause (s) (*ibid*) narcotic drug has been categorized in following two categories:

- (i) **Category (i)** coca leaf, cannabis and poppy straw;
- (ii) **Category (ii)** cocaine, heroin, methamphetamine, midomafetamine and all manufactured drugs or any other substance, which Government of Sindh may, by notification in the official gazette, declare to be narcotic drug for the purpose of this Act; leaf, cannabis and poppy straw;

8. Section 9 of the Act of 2021 has substituted section 9 of the Act of 1997, as under:

**"9. Punishment for contravention of section 6, 6-A, 7 and 8.** Whoever contravenes the provisions of sections 6, 6-A, 7 and 8 shall be punished with--

(a) imprisonment which may extend to three years but shall not be less than six months, or with fine upto rupees one lac but shall not be less than rupees fifty thousand, or with both if the quantity of psychotropic substance or controlled substance or narcotic drug **category (i)** is one hundred gram or less;

(b) imprisonment which may extend to seven years but shall not be less than three years and shall also be liable to fine upto rupees five lac but shall not be less than rupees one lac if the quantity of psychotropic substance or controlled substance or narcotic drug **category (i)** exceeds one hundred gram but does not exceed one kilogram, or if the quantity of narcotic drug **category (ii)** is fifty gram or less;

(c) death or imprisonment for life or imprisonment for a term which may extend to fourteen years and shall also be liable to fine which may be upto one million rupees, if the quantity of narcotic drug **category (i) and (ii)**, psychotropic substance or controlled substance exceeds the limit specified in clause (b):

Provided that if the quantity of narcotic drug category (i), psychotropic substance or controlled substance exceeds ten kilograms or narcotic drug category (ii), exceeds two kilograms, the punishment shall not be less than imprisonment for life." \_

(Emphasis supplied)

9. The record indicates that on the day of his arrest, the applicant was riding a motor-cycle without number plate and from his personal search, police recovered heroin and crystal, which were sealed by the police on the spot. As per F.I.R. private persons did not cooperate to act as mashirs. Even otherwise Section 25 of the Act of 1997 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 of 1997. Applicant's claim with regard to his false implication after being arrested from his house is an issue that cannot be attended without going beyond the scope of tentative assessment, an attempt prohibited by law. Under sections 21 & 22 of the Act of 1997, an officer of the rank of Sub-Inspector or equivalent or above could exercise the powers of arrest and seizure of narcotics, but this is not an absolute rule to follow in extreme urgency as in some case prompt action is required as delay can cause the escape of accsued. The applicant has a criminal record, he was earlier arrested in Crime No. 401/2021, under section 9 (c) of the Act of 2021.

10. The record further indicates that the recovered heroin and crystal were sent to Director Laboratories & Chemical Examiner and Industrial Analytical Centre, respectively, for examination. Positive report of Industrial Analytical Centre regarding crystal brings the case of the applicant within the scope of prohibition, contemplated by Section 51 of the Act of 1997.

11. Prima facie, sufficient material is available on record to connect the applicant with the commission of alleged offence, which is punishable with death or imprisonment for life or imprisonment for a term which may extend to fourteen years, and no case for granting bail to him on the ground of alleged further inquiry has been made out; hence, instant bail application is dismissed, accordingly.

12. 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