

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Criminal Bail Application No.S-391 of 2021

DATE

ORDER WITH SIGNATURE OF JUDGE

1. For orders on office objection
2. For hearing of main case

Mr. Suneel Kumar, advocate for applicant.

Ms. RameshanOad, Assistant Prosecutor General.

Date of hearing: 3.9.2021

Date of decision: 3.9.2021

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ORDER

KHADIM HUSSAIN TUNIO-J:-Applicant seeks his admission to post arrest bail in Crime No. 41/2021, registered u/s 9(c) of the Control of Narcotic Substances Act, 1997, registered at P.S Sinjhor, Sanghar.

2. It is alleged that police party headed by SIP Ghulam Muhammad Dahri of Police Station Sinjhor apprehended the applicant during patrolling after receipt of spy information regarding an accused openly selling chars on 03.05.2021 and, from his personal search, recovered 2 large pieces of chars from his right pocket in a black plastic bag and 2 more pieces from the left side pant-fold, in total weighing 2000 grams, for which FIR was lodged against him.

3. Learned counsel for the applicant/accused has mainly argued that the applicant is innocent and has been falsely implicated in this case by the police; that no private witnesses were associated with the recovery proceedings even though the place of incident was shown to be a well-populated area; that the applicant was arrested on 03.05.2021 from the main gate of Sessions Court Sanghar and his brother had moved an application for protection before the Sessions Judge Sanghar and due to local influence and police aggression, the applicant was arrested based on ulterior motives; that the

investigation is completed and the applicant/accused is no more required for further investigation; that the offence does not fall within the prohibitory clause of section 497 Cr.P.C. and as such the applicant/accused is entitled for bail.

4. Conversely, learned Assistant Prosecutor General has vehemently opposed the bail of the applicant/accused on the ground that applicant is named in the FIR and a considerable quantity of chars has been recovered from his possession; that Section 103 Cr.P.C is not applicable in the narcotics cases. In support of her contentions, she has cited the case law reported as "*Asmat Ali v. the State*" (2020 SCMR 1000) and "*Muhammad Nouman Munir v. the State*" (2020 SCMR 1257).

5. I have given due consideration to the arguments advanced by the learned Counsel for the applicant as well as learned Asst. P.G and perused the material available on the record.

6. Perusal of record shows that that the applicant has been apprehended by the police party of PS Sinjhoru headed by the complainant and four pieces of chars are alleged to have been recovered from his possession which on weighing became 2000 grams. The punishment of such an offence falls within the prohibitory clause of Section 497 Cr.P.C. Section 51 of the CNS Act provides that bail shall not be granted to an accused person who is charged with an offence under this Act or under any other law relating to narcotics where the offence provides punishment of death. It is pertinent to mention that when the quantity of narcotics exceeds one kilogram, the case falls within the provision of Section 9(c) of CNS Act, 1997, for which the penalty being provided by law is of death or imprisonment for life. Discretion under Section 497 Cr.P.C could not be exercised where the offences are punishable with death or imprisonment for life unless the Court is satisfied that the charge against an accused appears to be false or groundless on

the face of it. In the case in hand, the police party has apprehended the applicant/accused alongwith recovery of 2000 grams of chars. Although the case of *Ghulam Murtaza*(**PLD 2009 Lahore 362**) provides progressive punishment for recovery of narcotics based on quantity, the same is not relevant at bail stage and is not up for consideration as held by the Hon'ble Apex Court in the case of *Socha Gul v. the State*(**2015 SCMR 107**).

7. As far as the prosecution witnesses are concerned, no direct enmity of theirs whatsoever has been proved with the applicant which would prompt them to foist such a huge quantity of 2000 grams of chars upon him. The alleged offence is one of heinous nature which falls within the prohibitory clause of Section 497 Cr.P.C. I am fortified by the case of *The State v Javed Khan*(**2010 SCMR 1989**). The Court is only to examine the record tentatively and *only* determine whether sufficient material is available on record to connect the applicant with the offence. Besides the above ground, the rest are immaterial and the bail application is meritless at this stage.

8. Furthermore, the offence with which the applicant is charged is against the society which is absolutely hazardous to the life of the people, as such, the case of the applicant falls within the prohibitory clause of Section 497 Cr.P.C. In view of the foregoing reasons and discussion, this Court is of the view that the applicant has failed to make out his case for grant of extraordinary relief of bail, therefore, the instant bail application being meritless is dismissed.

9. Needless to mention here that the observations made hereinabove are tentative in nature and will not cause prejudice to the case of either part at the trial.

JUDGE