

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

Criminal Bail Application No.S-533 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection
2. For hearing of main case

Mr. Noor-ul-Amin Sipio, advocate for applicant.
Mr. ShawakRathore, D.P.G.

Date of hearing: 27.08.2021
Date of decision: 03.09.2021

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ORDER

KHADIM HUSSAIN TUNIO-J:-Applicant seeks his admission to post arrest bail in Crime No. 62/2021, registered u/s 9(c) of the Control of Narcotic Substances Act, 1997, registered at P.S Hussainabad, Hyderabad.

2. It is alleged that police party headed by SIP Amjad Hussain Chandio of Police Station Husri apprehended the applicant during patrolling after receipt of spy information regarding four accused openly selling it on 12.05.2021 and from his personal search, from a side pocket of his *Kameez* recovered 4 pieces of chars weighing 2000 grams in total branded "STEEL TOWN", 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 recovery proceedings; that the applicant was arrested on 12.05.2021 whereas the Charas was sent to the chemical examiner on 07.05.2021, 5 days before his arrest; 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 D.P.G has vehemently opposed the bail of the applicant/accused on the ground that applicant is named

in the FIR and a considerable quantity of Charas has been recovered from his possession; that Section 103 Cr.P.C is not applicable in the narcotics cases; that no enmity or ill-will is alleged by the applicant/accused; that the change of dates is merely a mistyping and even otherwise relying on the same would be a tentative assessment that can only be gone into by the trial Court after examination of complete evidence.

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

6. Perusal of record shows that that the applicant has been apprehended by the complainant and four pieces of Charas 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. The discretion under Section 497 Cr.P.C cannot be exercised with regard to the offences punishable with death or imprisonment for life until and unless the Court at the very outset is satisfied that the charge stands against an accused appears to be false or groundless. In the case in hand, the police party has apprehended the accused alongwith recovery of 2000 grams of Charas. 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 enmity of theirs whatsoever has been alleged and proved with the applicant which would prompt them to foist such a huge quantity of 2000 Grams of Charas upon him. The alleged offence is an offence 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). Moreover, the argument regarding the date on which the Charas was sent to the chemical examiner is inconsequential at this stage as the same would prompt this Court to go into an in-depth perusal of record which is not appreciated at this stage as during a bail hearing, 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