

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

Cr.Bail Appln.No.S-198 of 2019

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

Date of Hearing 25.03.2019

Date of Decision 25.03.2019

Mr. Muhammad Hassan Jakhro, Advocate for applicant.

Mr. Shewak Rathore, Deputy Prosecutor General

ORDER

KHADIM HUSSAIN TUNIO, J.- Through the instant criminal bail application, applicant Usman alias Shango son of Ahmed Soomro seeks his admission on post arrest bail in Crime No.293 of 2018, registered at P.S. Bhattai Nagar, Hyderabad, under Section 9(c) of Control of Narcotic Substances Act, 1997.

2. The allegations against the applicant / accused are that on 07.12.2018, the complainant ASI Asghar Ali Gopang alongwith his subordinate staff during patrolling received spy information that a person is selling Charas at Protective Band. On such information, the police party proceeded to the pointed place, apprehended the accused and from his possession 2000 Grams of Charas were recovered, for which F.I.R was lodged.

3. Learned Counsel for the applicant has mainly contended that the applicant is innocent and has been implicated by the complainant party malafidely and with ulterior motives; that complainant is ASI and there is clear violation of Section 21 & 22 of CNS Act, 1997; that all the witnesses are police officials and none from the public has

been made as mashir to witness the recovery proceedings; that the police party has involved the applicant in a false case as he was already booked in an offence under Section 9(b) by the police of P.S Naseem Nagar, Qasimabad, Hyderabad, bearing Crime No.213 of 2018 and was convicted by the trial Court but thereafter acquitted by this Court vide judgment dated 25.09.2018 passed in Criminal Appeal No.S-61 of 2018; that the place of incident is a thickly populated area but no independent person has been made as mashir which is clear violation of Section 103 Cr.P.C; that the applicant is in custody and he is no more required for further investigation. Learned Counsel in support of his arguments has relied upon the cases reported as *2009 P.Cr.L.J 315 and 2016 SCMR 1424*.

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 huge 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.

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. It reveals from the record that applicant has been apprehended by the complainant and some pieces of Charas are alleged to have been recovered from his possession which on weighing became 2000 Grams. The punishment of offence falls within the prohibitory clause of Section 497 Cr.P.C. Further, the CNS Act, 1997, consolidates and amends the law relating to narcotics drugs psychotropic substances, which controls and prohibits the prosecutions,

processing and trafficking the substances. It also lays progressive punishments of narcotics offences. It provides for the constitution of Special Court having exclusive jurisdiction to try narcotic offences. Section 51 of the 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 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, as such, the offence committed by the accused is dangerous to the lives of the people, which should abruptly be restrained. The accused has tried to make the public habitual of the narcotics and such narcotics cannot freely be allowed. In my humble view, the applicant appears to be one of habitual criminals as in such like cases he was earlier involved by the police of P.S Naseem Nagar vide F.I.R No.2013 of 2019, wherein he was convicted by the trial Court but was acquitted by this Court. The acquittal of the applicant in the above crime is not sufficient until and unless he proves himself to be involved by the police with ulterior motives in the present case.

7. So far as, the prosecution witnesses are concerned, suffice it to say that they have no enmity whatsoever with the applicant indulging themselves 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)***, wherein the Honourable Apex Court has observed as under:-

“4. Having gone through the above provisions of law, we do not feel persuaded to agree that the case of the petitioner will not fall within prohibitory clause of section 497, Cr.P.C, but it shall be covered by section 9(c), providing for various sentences as reproduced above, which not only squarely fall within prohibitory clause of section 497, Cr.P.C. but also attract the bar contained in section 51(1) of the Act of 1997, specifically made applicable to those offences which, inter alia, provide for punishment of death sentence. For ease of reference, the said provision of law is reproduced as under:-

“51(1). Notwithstanding anything contained in sections 496 and 497 of the Criminal Procedure Code, 1898 (V of 1898), bail shall not be granted to an accused person charged with an offence under this Act or under any other law relating to narcotics where the offence is punishable with death.”

When the law makers have provided some special provision in the statute to bar the jurisdiction of special Court established under the said enactment, due weight is to be given to such special provision of law against general principles governing such cases, when accused approaches the Special Court or the High Court for grant of bail, as in the instant case.

5. Looking to the admitted facts of the case of respondent and the above discussed clear legal position, the approach of High Court in releasing the respondent on bail on the above referred ground, seems to be arbitrary, without application of mind and, contrary to settled principles of law, thus unsustainable.”

8. In another case of ***Socha Gul v. the State (2015 SCMR 107)***, the Honourable Apex Court while considering the offence under CNS Act to be heinous against the society at large, has observed as under:-

“8. It is pertinent to mention here that offences punishable under C.N.S. Act of 1997 are by its nature heinous and considered to be the offences against the society at large and it is for this reason that the statute itself has provided a note of caution under section 51 of C.N.S. Act of 1997 before enlarging an accused on bail in the ordinary course. When we refer to the standards set out under section 497, Cr.P.C. for grant of bail to an accused involved in an offence under section 9(c) of C.N.S. Act of 1997, even on that basis we find that an accused charged with an offence, prescribing various punishments, as reproduced above, is not entitled for grant of bail merely on account of the nature or quantity of narcotic substance, being four kilograms. Firstly, as deeper appreciation of evidence is not permissible at bail stage and secondly, in such situation, looking to the peculiar features and nature of the offence, the trial Court may depart from the normal standards prescribed in the case of Ghulam Murtaza (supra) and award him any other legal punishment. Thus, in our opinion, ratio of judgment in the case of Ghulam Murtaza (supra) is not relevant at bail stage.

9. Further, the Honourable Apex Court was pleased to recall the bail granted to the accused by this Court while deciding ***Criminal Petition No.41-K of 2018 (Re: the State, through Prosecutor General Sindh v. Ahmed Faraz)*** in case of recovery of 2050 Grams. In the case in hand, the recovery of Charas from the applicant was effected to the extent of 2000 Grams and such offence alleged to have been committed by the applicant 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.

10. In view of the foregoing and particularly keeping in view the law laid down by the Honourable Apex Court in the cases (supra), 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 was dismissed vide my short order dated 25.03.2019 announced in open Court, with direction to the learned trial Court to

proceed with the case expeditiously and decide the same preferably within a period of 03(three) months with submission of compliance report to this Court through the Additional Registrar.

11. 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

Shahid