

IN THE HIGH COURT OF SINDH, AT KARACHI
Cr. Bail Application No. 2134 of 2021

Applicant : Kamran s/o Awal Khan, through
Mr. Jawed Ahmed Rajput, advocate

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

Date of hearing : 16.02.2022
Date of order : 16.02.2022

ORDER

ZAFAR AHMED RAJPUT, J:- Applicant/accused Kamran s/o Awal Khan being failed to get the concession of post-arrest bail in Cr. Bail Application No. 4343/2021 from Model Criminal Trial Court/1st Additional. Sessions Judge Malir, Karachi vide order, dated 12.10.2021, through this application seeks the same concession from this Court in Crime/FIR No. 467 of 2021, registered under Sections 6/9(c) of the Control of Narcotic Substances Act, 1997 (the "Act") at Police Station Gadap City, Karachi.

2. Allegation against the applicant is that, on 24.09.2021 at 00:10 a.m., he was arrested by a police party headed by SIP Anwar Ali Khushk on being found in possession 1200 grams of charas at Gadap Road, Yasrab Colony Mord, 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, on 14.07.2021, the father of the applicant filed a petition bearing No. 1798/2021 before the learned Sessions Judge Malir, Karachi for recovery of the applicant from unlawful confinement of the police but later on the applicant booked in the false case. He also claims that the 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.

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 are the grounds of learned Addl. P.G. 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 27.09.2021. 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) that *“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. The Apex Court has also rejected bail plea in a case of recovery of 1200 grams of chars reported as Bilal Khan v. The State (2020 SCMR 460) by observing that “applicant’s claim with regard to his false implication is an issue that cannot be attended without going beyond the scope of tentative assessment, a venture prohibited by law”. Even the copy of the petition allegedly filed by the father of the applicant and the copy of the order passed*

thereon have not been produced on record. Considerable 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 false implication 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