

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI
Criminal Bail Application No. 261 of 2022

Date	Order with signature of Judge
------	-------------------------------

For hearing of bail application

09th March 2022

Mr. Noor Hussain Jamali advocate for the applicant
Mr. Habib Ahmed Special Prosecutor ANF.

Salahuddin Panhwar, J.- On a tip off, applicant was apprehended by a contingent of ANF officials from a bus coming to Karachi from Dera Murad Jamali and from his possession, recovered 1000 grams of ice.

2. Learned counsel for the applicant/accused contended that the applicant is innocent; that nothing has been recovered from possession of the applicant/accused and in fact the Ice has been foisted upon him; that no passenger from the bus has been associated to witness arrest and recovery; that present case is punishable under Section 9(b) of Control of Narcotic Substances Act, 1997, hence the alleged offence does not fall within the prohibitory clause of Section 497 Cr.P.C.; that the accused/applicant is suffering from hepatitis and have stones in his kidney; that applicant was arrested from his house on 08.11.2021 by Rangers officials; therefore, applicant is entitled to the grant of bail.

3. Conversely, learned Special Prosecutor ANF has vehemently opposed the bail application and contended that applicant was arrested with 1000 grams of ice and present offence is against society.

4. Heard and perused the record.

5. Record reflects that applicant was arrested on tip off from the bus and from his possession ice weighing 1000 grams was recovered; that with regard to non-association of the private witnesses, the complainant has mentioned in the FIR that he asked four passengers to witness search and arrest, but they refused. In any event by virtue of section 25 of the Act, non-association of a public witness is not fatal to prosecution as section 103, Cr.P.C. has been excluded in narcotics cases. Reliance is placed on the case reported as **Zulfiqar Ahmed vs. The State** (2006 SCMR 800). With regard to the fact that present offence is not falling within the prohibitory clause, it is noted that

applicant was arrested red-handed with a considerable quantity of a lethal contraband, which brings the case within the contemplation of section 51(2) of the Control of Narcotic Substances Act, 1997, which provides that in the cases of other offences punishable under the Act of 1997, bail shall not be normally granted unless the court is of the opinion that it is a fit case for the grant of bail, which is lacking in this case. With regard to medical ground, record reflects that on 10.02.2022, this Court directed the Jail Superintendent to submit report with regard to present health condition of the applicant. In compliance thereof, Chief Medical Officer, District Prison & Corrections Facility, Malir Karachi has reported in his report dated 08.03.2022, that the condition of the applicant is stable at present. It is well settled that such ground could be agitated in the event when treatment of the accused in jail is not possible at all or that his condition is such that his further detention is threatening to his life or he is suffering from some contagious or transmissible disease. In the absence of any of these conditions, bail on a medical ground cannot be granted. Reliance is placed upon the case reported as Mian Nazir Ahmed v. The State (2016 SCMR 1536). Learned counsel for the applicant then attempted to argue that complainant himself investigated the matter, however, learned counsel was unable to point out any prejudice caused to the applicant just because the complainant investigated the matter. In any event no enmity has been alleged against the ANF officials by the applicant. Lastly, it is contended by the counsel for the applicant that applicant was arrested by the Rangers from his house two days prior to the incident and such application was addressed by the father to the SHO concerned, however, after such application, the father of the applicant remained mum and no efforts have been taken by him for the recovery of his son. In any event, at bail stage only tentative assessment is to be undertaken and no deeper appreciation is required.

6. For the foregoing reasons, the bail application is dismissed. However, it is clarified that observations made in this order are tentative in nature and same shall not prejudice the case of either party. However, learned trial court is directed to conclude the trial expeditiously.

JUDGE