

IN THE HIGH COURT OF SINDH, AT KARACHI
Cr. Bail Application No. 2341 of 2021

Applicant : Sajid Ali s/o. Abdul Rauf, through
Mr. Piyas Ali Soomro, advocate

Respondent : The State, through Mr. Faheem Hussain
Panhwar, D.P.G.

Date of hearing : 14.03.2022

Date of order : 14.03.2022

ORDER

ZAFAR AHMED RAJPUT, J:- Through instant Criminal Bail Application, applicant/accused Sajid Ali s/o. Abdul Rauf seeks post-arrest bail in Crime/FIR No. 1663 of 2021, registered at P.S. Shah Latif Town, Malir Karachi under sections 6/9(c) of the Control of Narcotic Substances Act, 1997 (*the "Act"*). His earlier application for the same relief bearing No. 4774 of 2021 was dismissed by the learned MCTC/Ist Additional Sessions Judge Malir, Karachi vide order, dated 04.11.2021.

2. As per F.I.R., on 16.10.2021 at 02:40 a.m., the applicant was arrested by a police party headed by ASI Muhammad Younus of P.S. Shah Latif Town, Malir Karachi on being found in possession of 2400 grams of Charas at Murghi Khana Bus Stop, near Malir River Bridge, for which he was booked in the aforesaid Crime.

3. Learned counsel for the applicant contends that the applicant is innocent and has falsely been implicated in this case by the police with mala fide intention and ulterior motives; that the applicant was taken by the police party from his house on 12.10.2021; police demanded illegal gratification from his family and on their failure, applicant was falsely involved in this case despite the fact that the sister of the applicant moved applications to the Honourable Chief Justice of this Court, S.S.P. Malir and Director General Rangers disclosing therein the real facts; that nothing was recovered from possession of the applicant and the alleged

recovered charas has been foisted upon him; that neither F.I.R. nor Charge-Sheet bears the Daily Diary Entry number under that the police party left police station for patrolling; hence, the arrest of applicant and alleged recovery from his possession is doubtful, entitling him for its benefit at bail stage.

4. On the other hand, learned Deputy Prosecutor General opposes the grant of bail to applicant on the ground that capital punishment has been provided for the alleged offence under the Act and sufficient evidence is available with the prosecution to connect him with the commission of alleged offence; hence, he is not entitled for the concession of bail; as such, the instant Cr. Bail Application is liable to be dismissed.

5. I have heard learned counsel for the parties and perused the material available on record with their assistance.

6. Perusal of the record shows that the applicant is confined in judicial custody since his day of arrest and police has submitted challan; hence, his physical custody is not required by the police for further investigation. Although the punishment under section 9(c) of the Act for possessing 2400 grams of Charas is up to death or imprisonment for life and section 51(1) of the Act lays down embargo on the Court not to grant bail in the offence, which is punishable with death, or imprisonment for life, or imprisonment for a term which may extend to fourteen years, yet in the present case, it is an admitted position that neither in the F.I.R. nor in the final Charge-Sheet, the Daily Diary Entry number has been mentioned under which the police party made departure from police station for patrolling, which is lapse on the part of the prosecution creating reasonable doubt about recovery and authenticity of the police party's departure from police station has become fishy and thus made the case of prosecution of further inquiry. No reason exists for keeping the applicant behind the bars, when sufficient illegalities and irregularities have appeared in the case of the

prosecution, which have created doubt in the prosecution story; benefit of which would go to applicant, who is in circumstances entitled to bail. Accordingly, the instant application is allowed, and in result thereof the applicant is admitted to post-arrest bail in aforesaid crime/offence subject to furnishing by him solvent surety in the sum of Rs.100,000/- (Rupees One Hundred Thousand only) and P.R. Bond in the like amount to the satisfaction of the trial Court.

7. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicant/accused on merits. However, in case the applicant misuses the concession of bail in any manner, the trial Court shall be at liberty to cancel the same after giving him notice, in accordance with law.

JUDGE

Athar Zai