

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**

Crl. Bail Application No.S- 205 of 2021

For hearing of Bail Application

Mr. Abdul Rehman Khakhrani Advocate for Applicant/Accused.  
Mr. Shafi Muhammad Mahar, Deputy P.G for the State.

Date of Hearing: **19-04-2021**

Date of short Order: **19-04-2021**

**ORDER**

**AFTAB AHMED GORAR J.** This bail application arises out of Crime No.08 of 2021 of Police Station, Daharki for offence under Section 9(c) Control of Narcotics Substance Act, 1997. Earlier, the bail plea of the applicant was turned down by learned trial Court vide order dated 13.02.2021.

2. In nutshell the case of the prosecution is that on 26.01.2021 at about 1015 hours, the applicant/accused was apprehended by patrolling police party of police Station, Daharki from Bhirchundi Bus Stop, NHW road and from his possession 2000 grams of Charas was recovered with cash of Rs. 500/- by ASI Ghulam Shabbir Gabol in presence of official witnesses. Consequently, above FIR was lodged.

3. Learned counsel for the applicant contended that the applicant is absolutely innocent and has falsely been implicated in this case; that the applicant was arrested by police from Karachi on 05.01.2021 and brought at P.S, Daharki and that his mother had moved such

applications to the SHO, P.S, A-section, Ghotki, SSP, Ghotki, DIGP, Sukkur and IGP, Sindh and due to such annoyance, the applicant has been booked in this false case by foisting the alleged recovery of Charas upon him; that there is gross violation of provision of Section 103 Cr.P.C as all the witnesses are police officials and no independent person has been associated to witness the recovery proceedings; that the applicant is behind bars since his arrest and his corpse is not required for investigation purpose, and in this view of the matter, keeping the applicant incarcerated till indefinite period in such like case does not look justified. Lastly, he prayed for grant of bail to the applicant as the case of the applicant calls for further enquiry as envisaged under sub-section 2 of Section 497 CrPC. In support of his contentions, learned counsel relied upon cases of *Rehan v. The State* **(2009 SCMR 181)**, *Jamaluddin alias Zubair Khan v. The State* **(2012 SCMR 573)**, *Ali Hassan alias Hassan v. The State* **(2014 YLR 188)**, *Shah Nawaz Thaheem v. The State* **(2003 MLD 1236)** and *Muhammad Saeed Khan v. The State* (2016 **PCr.LJ 730**).

4. Learned Deputy P.G for the State opposed the grant of bail on the ground that the applicant was arrested on the spot and 2000 grams Charas was recovered from him.

5. Arguments of both the parties were heard and record of the case was perused.

6. After careful consideration of the arguments advanced by learned counsel for the parties and careful examination of the material available on record, it is evident that no doubt the alleged recovery of Charas is 2000 grams, but inspite of spy information police has failed to make attempt for association of independent persons as witness of the recovery. No doubt, it is settled proposition of law that police official are good witnesses as others but simultaneously it is the duty of the police officers when there is possibility of joining the independent persons as witness, in such eventuality they must take all efforts to join the independent person, in case of failure they shall justify with explanation. It is also a matter of record that besides FIR of present case, the applicant is also involved in two other FIRs bearing Crime No.04 of 2021 registered on 08.01.2021 at P.S, Jarwar on behalf of the State regarding ineffective firing, in which applicant is alleged to have run away from the spot, whereas another Crime No. 04 of 2021 registered on 11.01.2021 at P.S, Ubauro, on behalf of the State, which is also in respect of ineffective firing upon police and in this case the applicant is also alleged to have fled away from the spot and third FIR is of the present case lodged on 25.01.2021, in which applicant is shown to have been arrested by police of P.S, Daharki with recovery of alleged narcotics substance. The applicant has also placed on record series of applications made by his mother to high-ups of the police and others regarding his arrest from Karachi on 05.01.2021 and thereafter his involvement in three cases at different police stations. Admittedly, the applicant is non-previous convict and he is behind the bars since

his arrest and his corpse is not required for investigation purpose. In this view of the matter, keeping the applicant incarcerated till indefinite period in such like case does not look justified. Hence, *prima facie* the applicant succeeded to make out a case for further enquiry, as contemplated under Sub-Section 2 of Section 497 CrPC. Consequently, by a short order dated 19.04.2021, instant Crl. Bail Application was allowed and the applicant admitted to post arrest bail subject to his furnishing bail bonds in the sum of Rs. 1,00,000/- with one surety in the like amount to the satisfaction of learned trial Court. These are the reasons in support of short order.

7. Before parting, it needs not to make clarification that the observations recorded above are tentative in nature, therefore, the trial Court shall not be influenced in any manner whatsoever.

**J U D G E**

Ahmad