

*Order Sheet*  
IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Application No. 358 Of 2021

*Naseer Ahmed @ Naseera Vs. The State*

Ms. Khair un Nisa, Advocate for applicant/accused.  
Ms. Rubina Qadir, D.P.G.

Date of Hg: 21.04.2021

ARSHAD HUSSAIN KHAN, J: The applicant/accused namely, Naseer Ahmed @ Naseera son of Ali Bahadur, through above bail application has sought post-arrest bail in the case bearing F.I.R. No.97/2021, registered under Section 6/9-C C.N.S Act 1997, at Police Station Defence, Karachi.

2. Brief facts, as narrated in the F.I.R., are that on 03.02.2021 at about 1200 hours, the police party headed by ASI Shoukat Hayat along with his subordinate staff, namely, PC Izat-36622 and driver HC Shahzad Khan in the police mobile-III, Defence No. SPD-796 were busy in patrolling in the area to prevent crime, when reached at Kalapul, Hazara Colony, Talwali Gali, Karachi, they saw one person in suspicious condition standing there having one shopper in his hand. On inquiry, he disclosed his name Naseer @ Naseera son of Ali Bahadur, whose personal search was made in presence of the accompanied police personnel due to non-availability of private witness and recovered *Charas* weighed through digital scale, found 1310 grams and subsequently it was sealed. The accused was apprehended with recovered *Charas*; the act of the accused falls under Section 6/9-C Control of Narcotics Act, 1997.

3. Learned counsel for the applicant/accused submits that applicant/accused is innocent and has falsely been implicated in this case with ulterior motives by the complainant. Further submits that nothing has been recovered from the possession of the applicant/accused and the alleged *charas* have been foisted upon by the police. She further submits that no name of purchaser even fake purchaser has been mentioned by the police party, therefore, allegation of selling *charas* has no evidentiary value in the eyes of law. She also submits that there is clear violation that no private person has been cited as witness in this case as the place of incident

is thickly populated area. Further submits that the recovered charas weighing about 1310 grams comes on boarder line and the present applicant/accused is deserved for concession of bail. It is also violation of law that the FIR was registered by ASI and not SIP as per requirement of law. The alleged recovery has also been affected by ASI, therefore, violated Sections 21 and 22 of Control of Narcotics Substance Act, thus case requires further inquiry. She next submits that the alleged offence does not fall within the prohibitory clause of section 497 Cr.P.C. therefore, it is well settled principle of law that the offence which does not fall within the prohibitory clause of section 497 Cr.P.C. the grant of bail is rule and refusal is an exception. She lastly prayed that the applicant/accused may be admitted to bail. Learned counsel in support of her arguments has relied upon the case of Muhammad Yaqoob v. The State [2008 P.Cr.LJ 1488] and Qurban Ali v. The State [2017 SCMR 279].

4. Learned D.P.G. for the State has vehemently opposed the bail application while arguing that the applicant/accused is named in the FIR with his specific role, arrested at the spot and the recovery has also been affected from his possession. Learned D.P.G. has further argued that the applicant/accused is also involved in the similar crimes under C.N.S. Act 1997 and he is habitual offender and after release on bail in the previous crime committed the present crime, and as such he is not entitled to the concession of bail in the present case.

5. After giving careful consideration to the arguments of the learned counsel for applicant/accused and D.P.G, as well as perusal of the record, it appears that the applicant/accused is nominated in the FIR with specific role and further the applicant/accused was arrested on the spot at day time and a contraband narcotics have been recovered from his exclusive possession.

6. Insofar as the contention of the learned counsel for the applicant/accused that no credible witness and private person was associated as Mashir in this case is concerned, the same is misconceived in as much as by virtue of section 25 of the Act non-citing of public witness is not fatal to the prosecution case as section 103, Cr.P.C. has been excluded from its application in cases of narcotics. In this context, reference can be placed on a case of Zulfiqar Ahmed vs. The State [2006 SCMR 800]. Furthermore, the

Hon'ble Supreme Court in the cases of Muhammad Khan v. The State [2008 SCMR 1616], Tariq Mehmood vs. The State through Deputy Attorney-General, Peshawar [PLD 2009 SC 39] has held that mere fact that the witnesses belong to police is no ground to discard their evidence. They are as good and respectable witnesses as other public witnesses and their statement cannot be discarded for the reason that they were the police employees.

7. Insofar as the other contention of learned counsel for the applicant/accused, viz. violation of Sections 21 and 22 of the Control of Narcotic Substance Act 1997, is concerned, this question has been elaborately decided in case of Muhammad Younas and others v. Mst. Parveen alias Mano and others [2007 SCMR 393] by the Hon'ble Supreme Court of Pakistan, wherein, inter alia, it has been held as under:-

"The other argument of the learned counsel for the respondent No.1 as to the violation of the provisions of sections 21 and 22 of the Act needs to be dealt with. Ordinarily, only an officer of the rank of Sub-Inspector or equivalent or above may exercise the powers of arrest and seizure of narcotics. But this is not an absolute rule. There may be cases of extreme urgency requiring prompt action, where an accused is caught with narcotics in his possession by a Police Officer of a lower rank. Can it be said that such Police Officer should just let him go with the narcotics? The answer would certainly be in the emphatic "No". The guilt or innocence of an accused does not depend on the question of competent or otherwise of a Police Officer to investigate the offence. A trial of an accused is not vitiated merely on the ground that the case has been investigated by an officer who is not authorized to do so unless a contrary intention appears from the language of a statute. The competent Court would proceed to determine the guilt or innocence of an accused on the basis of the evidence produced before it irrespective of the manner in which he is brought before it."

In addition to the above, the Hon'ble Supreme Court in the case of Zafar Iqbal v. Muhammad Anwar and others [2009 SCMR 1488] has very categorically held that Sections 20 to 22 of C.N.S. Act. are directory in nature, non-compliance thereof would not be a ground for holding the trial/conviction bad in the eyes of law.

8. In the instant case, it appears that the applicant/accused was arrested on the spot at day time and a contraband narcotics have been recovered from the exclusive possession of the accused, which was tested positive by the chemical examiner and the F.I.R. was promptly lodged on the same day. Further, there is no denial that the Applicant is previously involved in the similar nature of crimes. As regards the contention of the learned counsel for the

applicant/accused that the case of applicant/accused does not fall within the prohibitory clause of section 497 Cr.P.C., the Honourable Supreme Court of Pakistan in the case of Anti-Narcotics Force through its Regional Director Commander, A.N.F. Rawalpindi v. Qasim Ali [2019 SCMR 1928], inter alia, held as under

“3.....Section 51 of the Control Narcotic Substance Act 1997 clearly ousts application of the provisions of section 497, Cr. P.C. to the cases under the Control Narcotic Substance Act 1997 and thus, any reference to subsection (2) of section 497, Cr. P.C by the High Court while admitting the respondent to bail was uncalled for.

9. Although there is no denial of applicant's involvement in other cases of identical nature, yet it was argued that the applicant has not been convicted in the said case. Such contention of learned counsel for the applicant is untenable in law, as applicant's involvement in another case of identical nature shows his inclination towards being a desperate character. Moreover, mere non-conviction of the Applicant/accused in the past for any crime is no ground by itself to release him on bail. Reliance in this regard can be placed on the case of Afzaal Ahmed v. The State [2003 SCMR 573].

10. It is settled that for deciding the bail application the court has to observe the tentative assessment and deeper appreciation of evidence is not required and it will not be fair to go into discussion about the merits of the case at this juncture. Reliance in this regard can be placed on the cases of Saleh Muhammad v. The State [PLD 1986 Supreme Court 211] and The State v. The Zubair and 4 others [PLD 1986 Supreme Court 163]. Insofar as the case law relied upon by learned counsel for the applicant is concerned, the same are not applicable being distinguishable to the facts of the present case as well as in view of the dictum laid down by the Honourable Supreme Court of Pakistan in the case of Afzaal Ahmed (supra). Even otherwise, it is settled law that every criminal case is to be decided on its own merits.

11. In view of the foregoing, I am satisfied that on the basis of facts, available on the record, the prosecution has succeeded in making out a reasonable case, which prima facie connects the applicant with the possession of the narcotics substances, which constituted an offence under Section 6 of the C.N.S. Act, and, therefore, I am of the view that the applicant has failed to make out a

case for grant of bail. Accordingly, this bail application is hereby dismissed.

12. Needless to state that the observations made in this order are of a tentative nature and only for purposes of this bail application. Nothing herein shall affect the determination of the facts at the trial or influence the trial Court in reaching its decision on the merits of the case.

JUDGE