

**IN THE HIGH COURT OF SINDH,  
AT KARACHI**

**Cr. Bail Application No. 499 of 2021**

Applicant : Through Ali Zaheer, Advocate  
The State : Through, Rubina Qadir, D.P.G.  
Date of Hearing : 26.04.2021

**ORDER**

**YOUSUF ALI SAYEED, J.** - The Applicant, Raheem Bux son of Allah Bux, seeks post arrest bail in respect of FIR No.122 of 2021 registered at P.S Malir City, Karachi under Section 6/9-C of the CNS Act (the “**FIR**”).

2. The version of events depicted in the FIR is that on 09.03.2021, while acting on a tip received from a confidential informant during the course of patrolling, a police party came across and encircled four persons at 02.50 AM on the Street at Ghareebabad Goth, near Naeemia Madarsa, Malir City, Karachi, of whom two, namely the Applicant and one Muhammad Sameer, son of Hassan, were apprehended, with 2010 grams of charas allegedly being recovered from a plastic shopping bag held by the former and 1100 grams of charas from a bag held by the latter, whereas the other suspects, one of whom was a lady, managed to run away, with it being said that the identity of the escapees was then disclosed as being Yar Muhammad, son of Taj Muhammad, and Faiza, wife of Saleem. Allegedly, while fleeing, they threw down the plastic bags that they were holding at the time, which were retrieved by the police personnel and yielded 1015 and 1020 grams of charas respectively.

3. Learned counsel for the Applicant submitted that he had been falsely implicated in the case by the police and contended that the version of events disclosed in the FIR was implausible, as reflected by the improbability of two persons, including a female accused, managing to escape from the police party by fleeing the scene after being encircled and without there being any reference to the use of force on their part or even a mention as to the presence of a vehicle or other means of absconsion, and it merely being stated that they had run away after throwing down the drug laden shopping bags that they were holding. It was also pointed out that that the co-accused shown to have been arrested along with the Applicant had already been granted post arrest bail by the trial Court vide an Order made on 18.03.2021 and the pre-arrest bail granted to the other accused said to have fled the scene had also been confirmed by the same forum. It was argued that as the role ascribed to the Applicant was more or less on the same footing, hence he was also entitled to bail under the rule of consistency.
4. Conversely, the learned DPG fell back on the plea that the case of the Applicant was distinguishable from that of other accused persons as a larger quantity of Charas had been recovered from the applicant, stating that the Report of the Chemical Examiner in that regard was also in the affirmative. It was argued that unlike the cases of the co-accused, which were 'borderline', that of the Applicant fell within the scope of S.9(c) of the CNS Act, hence attracted the bar in terms of S.51 thereof. However, on a query posed it was conceded by the DPG that the Applicant did not have any prior CRO.
5. Having considered the arguments advanced in light of the material on record, it merits consideration with reference to the prosecution argument that in the case reported as Khuda Bakhsh v. The State 2015 SCMR 735 it was held by the Honourable Supreme Court that the degree of punishment under S. 9(c) of the CNS Act increases with the

quantity of the narcotic recovered, and that the proviso to S. 9(c) applies only when the greater punishment of life imprisonment or death could be awarded, which is when the threshold of 10 kilograms is reached, whereas the quantity allegedly recovered in the instant case is 2010 grams. As such, in view of the case of Khuda Bakhsh, the alleged offence would not attract the punishment of death, therefore this is not a case that attracts the bar to bail contained in S. 51(1) of the CNS Act.

6. On the contrary, for the reasons reflected in the grounds advanced during the course of arguments, the matter apparently presents a fit case for the grant bail under section 51(2) of the CNS Act, hence the Applicant being admitted to post-arrest bail vide a short Order made in Court upon culmination of the hearing on 26.04.2021, subject to furnishing solvent surety in the sum of Rs.200,000/- along with P.R. Bond in the like amount to the satisfaction of the trial Court.
7. Needless to state that the observations made herein are tentative and ought not to be construed so as to prejudice the case at trial.

**JUDGE**

Karachi  
Dated: 29.04.2021