

**ORDER SHEET**  
IN THE HIGH COURT OF SINDH AT KARACHI  
**Cr. Bail Application No. 1036 of 2021**

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Date	Order With Signature Of Judge
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For hg of bail Application

**04.08.2021**

Mr. Khurram Shahzad, advocate for applicant.  
Mr. Abrar Khichi, Additional Prosecutor General.

**ZULFIQAR AHMED KHAN, J** :- Through instant Criminal Bail Application, under section 497 Cr. P.C., the applicant/accused seeks bail in case Crime No.767 of 2021, registered at P.S. Surjani Town, under section 6/9-C Control of Narcotics Substances Act, 1997. His earlier bail application bearing No.2374/2021 was dismissed by the learned VIII-Additional Sessions Judge, Karachi (West), vide order dated 29.05.2021.

2. Briefly stated facts of the prosecution case as alleged in the F.I.R. are that on 07.05.2021 ASI Amir Malik of PS Surjani Town left PS along with subordinate staff namely PC Ghulam Shabbir, PC Mehtab and DPC Javed for patrolling in the area on police mobile. During patrolling from different places when he reached at Service Road near Government Degree College Sector 7/A, Surjani Town, Karachi at 0100 hours, he saw that two suspected persons were coming on a motorcycle in suspicious condition. He tactfully apprehended both of them. On inquiry one disclosed his name as Muhammad Farhan son of Muhammad Younis. One blue color shopper was lying on the fuel tank of motorcycle and on checking the same ASI recovered Charas like Chittar wrapped in a white color shopper weighing 1700 Grams. On his further personal search he also recovered Rs.300/- from his possession. The second person disclosed his name as Ashiq Khan son of Wahid Bux. He

was holding one white color shopper in his hand and on checking the same ASI recovered Charas wrapped in yellow color tape weighing 1550 Grams. On his further personal search he also recovered Rs.300/- from his possession. The second person disclosed his name as Ashiq Khan son of Wahid Bux. He was holding one white color shopper in his hand and on checking the same ASI recovered Charas wrapped in yellow color tape weighing 1550 Grams. On his further personal search he also recovered one CNIC in the name of accused and two mobile phones from his possession. ASI sealed the case Property on the spot and brought the accused and case property at Police Station where he lodged the FIR of the incident as above.

3. Learned counsel for the applicant/accused has contended that the applicant/accused is innocent and has falsely been implicated in this case with malafide intention. He further contended that the accused was arrested from the cart (Pakora and Samosa) and police demanded the illegal gratification from the accused and upon denial he was booked in this false case and as per Section 21 of CNS Act, 1997 the ASI is not competent to lodge the instant FIR and at least rank of Sub-Inspector is entitled for registration of the FIR. He further contended that the co-accused namely Ashiq Khan son of Wahid Bux had been granted bail by VIIIth Additional Sessions Judge, Karachi (West), vide order dated 29.05.2021, therefore, the rule of consistency is applicable and accused is entitled for concession of bail. He further contended that no person has been shown by the prosecution as purchaser of the Charas which creates doubts in prosecution case and the place of incident is heavy populated area but no witness from the vicinity was made mashir and prosecution has also failed to associate any

person from the locality and the present crime does not fall under the prohibitory clause 497 Cr. P.C., hence the accused is entitled for the grant of bail. Lastly, the learned counsel has prayed for grant of bail.

4. It appears that no private mashir has been cited by the prosecution and under the provisions of CNS Act, 1997 ASI is not competent to lodge the FIR against the accused. It is pertinent to mention here that admittedly Chemical Examination Report has still not come, so it cannot be ascertained that in fact Charas was found at the crime scene. Since the co-accused Ashiq Khan son of Wahid Bux has already granted bail by the learned VIII<sup>th</sup> Additional Sessions Judge, Karachi-West vide order dated 29.05.2021, the present applicant also deserves for the same treatment following the rule of consistency.

5. In view of above, the case of applicant/accused squarely falls within the ambit of further inquiry as envisaged under subsection (2) of section 497 Cr. P.C., hence, he is admitted to bail subject to his furnishing solvent surety in the sum of Rs.20,000/- (Rupees Twenty thousand) and P.R. Bond in the like amount to the satisfaction of the trial Court. However, the learned trial Court is directed to conclude the trial as soon as possible.

The instant bail application stands disposed of accordingly.

JUDGE