

IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No. 1225 of 2021

Date	Order with signature of Judge
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For hearing of bail application :

21.09.2021 :

Mirza Nazim Baig, advocate for the applicant / accused.

Mr. Zafar Ahmed Khan, Addl. P.G. a/w SIP Rashid Baloch
of P.S. Risala.

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NADEEM AKHTAR, J. – This bail application under Section 497 Cr.P.C. has been filed by the applicant / accused Manzoor Ali son of Maqbool Ahmed seeking admission to post-arrest bail in Crime No.120/2021 registered against him on 24.05.2021 at P.S. Risala Karachi under Sections 6 and 9(c) of The Control of Narcotic Substances Act, 1997 (**‘the Act of 1997’**). The applicant / accused had filed Criminal Bail Application No.2114/2021, which was dismissed by the learned 1st Additional Sessions Judge (Model Criminal Trial Court) Karachi South vide order dated 18.06.2021.

2. The case of the prosecution, as set up in the subject FIR, is that during the patrolling of the area by the police party on the date and at the time and place mentioned in the FIR, a plastic shopping bag containing white coloured crystal-shaped ‘Ice’ was recovered by the police from the applicant which was found to be 60 grams according to the digital weighing scale lying in the police mobile ; the recovered ice was seized and sealed on the spot ; and, the incident took place in the presence of the patrolling police party as no other person was willing to act as *mashir* / witness.

3. It is contended by learned counsel for the applicant that there is malafide on the part of the police and the applicant has been falsely implicated in the subject crime with ulterior motive ; the alleged recovery has been foisted upon the applicant by the police ; there is overwriting in the FIR as the time of registration thereof has been subsequently changed in order to justify the delay in registering the FIR ; because of such tampering and manipulation in the FIR, the contents thereof have become suspicious and questionable ; despite the fact that the place of arrest of the applicant was a public place, no independent witness was associated by the police nor did they disclose the names of such independent persons who allegedly did not cooperate with them ; clause (c) of Section 9 of the Act of 1997 has been wrongly applied in this case ; the matter

requires further inquiry ; the applicant has no previous criminal record ; and, there is no apprehension that the evidence will be tampered with or that the witnesses of the prosecution will be influenced by the applicant, or he will abscond if he is released on bail.

4. On the other hand, learned DPG contends that the FIR clearly shows that ice was recovered from the applicant which was immediately seized and sealed on the spot ; the role of the applicant in relation to the commission of the subject offence is specific and clear in the FIR ; there was no delay either in lodging the FIR or in sending the narcotic substance recovered from the applicant for chemical examination ; and, the test report submitted by the Chemical Examiner supports the case of the prosecution. The allegations of malafide and ulterior motive on the part of the police officials have been specifically denied by learned DPG. It is further contended by him that in view of the amendments made in Section 9 of the Act of 1997 through The Control of Narcotics Substance (Sindh Amendment) Act, 2021, (**'Sindh Amendment Act of 2021'**) the offence committed by the applicant falls within the ambit of clause (c) of Section 9 of the Act of 1997, and accordingly it falls within the prohibitory clause of Section 497 Cr.P.C.

5. I have heard learned counsel for the applicant and learned DPG and have carefully examined the material available on record including the test report submitted by the Chemical Examiner after examining the ice allegedly recovered from the applicant. The Sindh Amendment Act of 2021 has made several significant amendments in the Act of 1997 which are briefly highlighted below :

- A. Clause (s) of Section 2 of the Act of 1997, containing the definition of "Narcotic Drug", has been substituted by a new clause (s) whereby "Narcotic Drug" has been redefined and divided into two categories viz. "Category (i)" and "Category (ii)" ;
- B. Coca leaf, cannabis and poppy straw fall in category (i) ; whereas, cocaine, heroin, methamphetamine, midomafetamine and all manufactured drugs or any other substance, which the Government of Sindh may by notification in the official gazette declare to be a narcotic drug for the purpose of the Act of 1997, are mentioned in category (ii) ;
- C. "Methamphetamine" mentioned in category (ii) has been defined in a new clause (r-i), inserted after clause (r) in Section 2 of the Act of 1997,

as an addictive neurotoxic stimulant used as a recreational drug having chemical formula C₁₀H₁₅N, and includes ice, meth and crystal ;

- D. A new Section 6-A has been inserted after Section 6 in the Act of 1997 which provides that no person shall extract, prepare, process, manufacture, sell, purchase, deliver on any terms whatsoever, transport or dispatch, psychotropic substance, controlled substance or narcotic drug ;
- E. Section 9 of the Act of 1997 has been substituted by a new Section 9 providing punishment for contravention of Sections 6, 6-A, 7 and 8. The quantity of narcotic drug, controlled substance or psychotropic substance and the punishments in relation thereto prescribed in clauses (a), (b) and (c) of Section 9 of the Act of 1997 have been changed and categorized according to categories (i) and (ii) ;
- F. Under clause (a) of the new Section 9, the imprisonment may extend to three (03) years, but shall not be less than six (06) months, or with fine up to Rs.100,000.00, but shall not be less than Rs.50,000.00, or with both, if the quantity in category (i) is 100 grams or less ;
- G. Clause (b) of the new Section 9 provides the imprisonment that may extend to seven (07) years, but shall not be less than three (03) years, or with fine up to Rs.500,000.00, but shall not be less than Rs.100,000.00, if the quantity in category (i) exceeds 100 grams, but does not exceed one kilogram, or if the quantity in category (ii) is 50 grams or less ;
- H. Clause (c) of the new Section 9 provides the punishment of death or imprisonment for life or imprisonment that may extend to fourteen (14) years, and fine up to Rs.1,000,000.00, if the quantity in categories (i) and (ii) exceeds the limit specified in clause (b) ; and
- I. Under the proviso of the new Section 9, if the quantity exceeds ten (10) kilogram in category (i) or exceeds two (02) kilograms in category (ii), the punishment shall not be less than imprisonment for life.
6. The above test report states that *“the contents of given parcel are identified as methamphetamine which is commonly known as Ice drug”*, and its gross weight and net weight have been shown as 60.8416 grams and 59.8248 grams, respectively. The above substance falls within category (ii) and the net

weight is about 20% more than the maximum limit of 50 grams prescribed in clause (b) of Section 9 *ibid*. Thus, the said quantity falls within the ambit of clause (c) of Section 9, and, being about 20% more than the maximum limit prescribed in clause (b), it significantly exceeds the maximum limit prescribed therein. Therefore, this is not a borderline case between the said clauses (b) and (c). The punishment of the offence falling under clause (c) is death or imprisonment for life or imprisonment for a term which may extend to fourteen years. Thus, the prohibition contained in Section 51 of the Act of 1997 shall apply to this case, and it also falls within the prohibitory clause of Section 497 Cr.P.C. Therefore, the applicant is not entitled to the concession of bail and there appears to be no exception to this rule in the facts and circumstances of the instant case.

7. The above view is fortified by *Muhammad Noman Munir V/S The State and another, 2020 SCMR 1257*, and *Bilal Khan V/S The State, 2021 SCMR 460*. In the former case, 1,380 grams of cannabis and 07 grams of heroin were recovered from the accused, and in the latter case the quantity of the recovered ice was 1,200 grams. In both the said authorities, concession of bail was declined by the Hon'ble Supreme Court by holding that the prohibition embodied in Section 51 of the Act of 1997 was applicable thereto. It was also held in *Muhammad Noman Munir* (*supra*) that the non-association of a witness from the public and his non-cooperation was a usual conduct symptomatic of social apathy towards civic responsibility ; and, even otherwise the members of the contingent being functionaries of the State are second to none in their status, and their acts statutorily presumed, *prima facie*, were *intra vires*.

8. The guilt or innocence of the applicant is yet to be established as it would depend on the strength and quality of the evidence produced / to be produced by the prosecution and the defense before the trial Court. Therefore, it is clarified that the observations made herein are tentative in nature which shall not prejudice the case of either party nor shall influence the learned trial Court in any manner in deciding the case strictly on merits in accordance with law.

9. In view of the above, the instant bail application is dismissed with direction to the learned trial Court to conclude the trial of the subject case within three (03) months strictly in accordance with law.

J U D G E