

IN THE HIGH COURT OF SINDH, AT KARACHI
Cr. Bail Application No. 603 of 2022

Applicant : Sartaj s/o Zarjan, through
Mr. Piyas Ali Soomro, advocate

Respondent : The State, through Ms. Rahat Ehsan, Addl. P.G.

Date of hearing : 22.04.2022
Date of order : 22.04.2022

ORDER

ZAFAR AHMED RAJPUT, J:- Applicant/accused Sartaj s/o Zarjan being failed to get post-arrest bail from the Court of Model Criminal Trial Court/1st Additional Sessions Judge, Karachi-East vide order dated 29.01.2022 passed in Sessions Case No. 3936/2021, through instant application seeks the same concession from this Court in Crime/FIR No. 07 of 2021, registered at PS. Excise, District East, Karachi under sections 6/9(c) of the Control of Narcotic Substances (Sindh Amendment) Act, 2021 (*the "Act of 2021"*).

2. Allegation against the applicant is that, on 22.11.2021 at 04:00 p.m., he was arrested on a tip off by excise police party headed by Harji Mal, Assistant Excise & Taxation Officer, Excise, Taxation & Narcotic Control (Excise), District East Karachi on being found in possession of 1100 grams of crystal/ice (*methamphetamine*) at puncture shop near Munawar Chowrangi, Gulistan-e-Jauhar, Karachi for which he was booked in the afore-mentioned F.I R.

3. Learned counsel for the applicant claims innocence and false implication of the applicant in the case. According to him, alleged recovery is doubtful being in violation of section 103, Cr. P.C, entitling the applicant to have benefit thereof at bail stage. He alleges enmity of applicant's family with Rangers and refers to C.P. No. D-8658/2017 & application to D.G. Rangers regarding kidnaping of applicant's father, filed by his mother (*copy filed today with statement by learned counsel for the applicant*) and F.I.R. No. 06/2018 lodged at P.S. Gadap City, Karachi under section 365/34, P.P.C. (*annexure "C" at page No. 35 of the memo of instant application*).

4. On the other hand, recovery of the crystal-Ice and red-handed arrest of the applicant; non-availability of private persons to act as mashirs and non-existence of enmity with arresting excise police party are the grounds of learned Addl. P. G. for the rejection of the instant application.

5. Heard. Record perused.

6. Crystal is a new anathema and social abuse in our society. As per publication of National Drug Intelligence Centre, Washington, available at www.usdoj.gov/ndic, crystal methamphetamine or crystal meth is a colorless, odorless form of d-methamphetamine, a powerful and man-made highly addictive synthetic stimulant. Like powdered methamphetamine (*another form of d-methamphetamine*), crystal methamphetamine is abused because of the long-lasting euphoric effects it produces. It, however, typically has a higher purity level and may produce even longer-lasting and more intense physiological effects than the powdered form of the drug. The most common names for crystal are ice and glass. It is smoked using glass pipes similar to pipes used to smoke crack cocaine. It is also swallowed and may be injected with a needle and taken by snorting it (*inhaling through the nose*). Crystal is increasingly gaining popularity as a "party" and "club" drug.

7. Methamphetamine is defined under Clause (r-i) of Section 2 of the Act of 2021 as "*an addictive neurotoxic stimulant which is used as a recreational drug, having chemical formula C₁₀ H₁₅ N and includes ICE, Meth and Crystal*". Under Clause (s) (*ibid*) narcotic drug has been categorized in following two categories:

(i) **Category (i)** coca leaf, cannabis and poppy straw;

(ii) **Category (ii)** cocaine, heroin, methamphetamine, midomafetamine and all manufactured drugs or any other substance, which Government of Sindh may, by notification in the official gazette, declare to be narcotic drug for the purpose of this Act; leaf, cannabis and poppy straw;

8. Section 9 of the Act of 2021 has substituted section 9 of the Control of Narcotic Substances Act, 1997 (*the "Act of 1997"*) as under:

"9. Punishment for contravention of section 6, 6-A, 7 and 8.

Whoever contravenes the provisions of sections 6, 6-A, 7 and 8 shall be punished with--

*(a) imprisonment which may extend to three years but shall not be less than six months, or with fine upto rupees one lac but shall not be less than rupees fifty thousand, or with both if the quantity of psychotropic substance or controlled substance or narcotic drug **category (i)** is one hundred gram or less;*

*(b) imprisonment which may extend to seven years but shall not be less than three years and shall also be liable to fine upto rupees five lac but shall not be less than rupees one lac if the quantity of psychotropic substance or controlled substance or narcotic drug **category (i)** exceeds one hundred gram but does not exceed one kilogram, or if the quantity of narcotic drug **category (ii)** is fifty gram or less;*

*(c) death or imprisonment for life or imprisonment for a term which may extend to fourteen years and shall also be liable to fine which may be upto one million rupees, if the quantity of narcotic drug **category (i) and (ii)**, psychotropic substance or controlled substance exceeds the limit specified in clause (b):*

Provided that if the quantity of narcotic drug category (i), psychotropic substance or controlled substance exceeds ten kilograms or narcotic drug category (ii), exceeds two kilograms, the punishment shall not be less than imprisonment for life." _

(Emphasis supplied)

9. In the instant case, it reflects from the record that the alleged recovered psychotropic substance was sealed by the excise police on the spot and sent to Industrial Analytical Centre, H.E.J. Research Institute of Chemistry, University Of Karachi for analysis on the very next day. As per the certificate of the Analyzer, the contents were identified as "methamphetamine/Ice". Positive report of Chemical Analyzer brings the case of the applicant within the scope of prohibition, contemplated by Section 51 of the Act of 1997. Though presence of

any private person has not been shown at the place of occurrence at the time of alleged incident, even otherwise Section 25 of the Act of 1997 excludes the applicability of Section 103, Cr. P.C.; therefore, association of witnesses from the public is not mandatory in the cases registered under the Act of 1997. It has been observed by the Apex Court in the case of Muhammad Noman Munir v. The State and another (2020 SCMR 1257) that *“people collected at the scene, despite request abstained to assist the law and it is so mentioned in the crime report itself, a usual conduct symptomatic of societal apathy towards civic responsibilities. Even otherwise, the members of the contingent being functionaries of the State are second to none in their status, with their acts statutorily presumed, prima facie, as intra vires.*

10. No enmity has been alleged against Excise police for false implication of the applicant in this heinous crime. So far the claim of the applicant that he was arrested from his house is not supported by the aforementioned petition, application and F.I.R. as the same relate to his father, not applicant. Moreover, the applicant has a criminal record. He was previously involved in a similar type of crime i.e. F.I.R. No. 319/2021 registered at P.S. Gadap Town, Karachi under section 6/9(c) Control of Narcotic Substances Act, 1997. The alleged offence is punishable with death or imprisonment for life or imprisonment for a term which may extend to fourteen years and shall also be liable to fine which may be up to one million rupees with. Prima facie, sufficient material is available on record to connect the applicant with the commission of alleged offence and no case for granting bail to him on the ground of alleged benefit of doubt has been made out; hence, instant bail application is rejected, accordingly.

11. Needless to mention here that the observations made hereinabove are tentative in nature and the same shall not influence the trial Court while deciding the case of applicant on merit.

JUDGE