

IN THE HIGH COURT OF SINDH, AT KARACHI
Cr. Bail Application No. 675 of 2022

Applicant : Asif Ali s/o. Najam-ud-din, through
Mr. Ghazi Khan, advocate

Respondent : The State, through Mr. Faheem Hussain
Panhwar, D.P.G.

Date of hearing : 25.04.2022
Date of order : 25.04.2022

ORDER

ZAFAR AHMED RAJPUT, J:- Applicant/accused Asif Ali s/o. Najam-ud-din being abortive to get the relief of post-arrest bail from Model Criminal Trial Court/Ist Additional Sessions Judge, Malir, Karachi in Cr. Bail Application No. 1418 of 2022 vide order, dated 02.04.2022, through instant application seeks the same relief from this Court in Crime/FIR No. 173 of 2022, registered at Police Station Steel Town, Karachi under sections 6/9(c) of the Control of Narcotic Substances Act, 1997 (the “Act”).

2. Allegation against the applicant is that, on 13.03.2022 at 04:00 a.m., he was arrested at Katcha Path, Filter Plant Road near Nursery, Steel Town, Malir, Karachi by a police party headed by SIP Shakir Nawab of P.S. Steel Town, Karachi on being recovered 1304 grams of charas, for which he was booked in the aforesaid F.I.R.

3. The learned counsel for the applicant contends that the applicant is innocent and has falsely been implicated in this case by the complainant with mala fide intention and ulterior motives; that nothing was recovered from the possession of the applicant and the alleged charas has been foisted upon him to justify his illegal arrest; that the applicant after closing his workshop at Shah Latif Town was going to his house alongwith his employee Waqas and reached Abdullah Goth at 9:30 hrs., where he was stopped by the complainant, who demanded original CNIC and registration documents of his bike, on his failure to produce the same, the

complainant demanded illegal gratification which applicant could not pay; that the applicant was apprehended in presence of witnesses, namely, Rehman Pathan, Ghafoor Jokhio and Abdullah Jokhio and, subsequently, he was implicated in this case; that no independent person has been associated to witness the alleged recovery, which fact alone creates doubt in a prudent mind about the guilt of the applicant, benefit whereof always goes in favour of the applicant even at bail stage; that the alleged recovery is a border line case between clause (b) & (c) of section 9 of the Act; that the applicant is confined in judicial custody since his day of arrest and police has already submitted challan; hence, the applicant is entitled for the concession of bail. In support of his contentions, learned counsel has relied upon the case of *Arshad alias Goga v. The State* (2022 P.Cr. L J 198).

4. On the other hand, learned D.P.G. resists grant of bail to the applicant on the ground that he was arrested on being found in possession of huge quantity of charas; that capital punishment has been provided for the alleged offence under the Act and sufficient evidence is available with the prosecution to connect the applicant with the commission of alleged offence; hence, he is not entitled to the concession of bail.

5. I have given due consideration to the arguments advanced by both the parties and also perused the material available on record.

6. Perusal of the record shows that the recovered charas weighing 1304 grams was sealed on the spot and sent to Chemical Analyzer for chemical examination on the very next day. Positive report of Chemical Analyzer brings the case of the applicant within the scope of prohibition, contemplated by Section 51 of the Act. Section 25 of the Act 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. It has been observed by the Apex Court in the case of *Muhammad*

Noman Munir v. The State and another (2020 SCMR 1257), while rejecting bail plea in a case of 1380 grams of cannabis with 07 grams of heroin, as under;

“Insofar as non-association of a witness from the public is concerned, 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.

7. Applicant’s claim with regard to his false implication is an issue that cannot be attended without going beyond the scope of tentative assessment, an attempt prohibited by law. With no stretch of imagination recovery of 1304 grams charas can be considered as borderline case. The huge quantity of charas allegedly recovered from the possession of the applicant can have devastating effect on the society. *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.

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

JUDGE

Athar Zai