

IN THE HIGH COURT OF SINDH, AT KARACHI
Cr. Bail Application No. 762 of 2022

Applicant : Mst. Nazia d/o Suleman w/o Ghulam Akhter,
through Mr. Umer Farooq, advocate

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

Date of hearing : 23.05.2022

Date of order : 23.05.2022

ORDER

ZAFAR AHMED RAJPUT, J:- Applicant/accused Mst. Nazia d/o Suleman w/o Ghulam Akhter being failed to get post-arrest bail from the Court of Additional Sessions Judge-I (Model Criminal Trial Court) Karachi-South vide order dated 26.03.2022, through instant application seeks the same relief from this Court in Crime/F.I.R. No. 96/2022, registered at P. S. Kalri, Karachi under sections 6/9(c) of the Control of Narcotic Substances (Sindh Amendment) Act, 2021 (the "Act").

2. Allegation against the applicant is that, on 18.03.2022 at 0130 hrs., she was arrested on a tip off by a police party headed by SIP Ghulam Hussain Khan of P.S. Kalri, Karachi on being found in possession of 2500 grams of charas in street No. 7, at Kara Bhai Kareem Jee Road, Kalri, Karachi, for which she was booked in the afore-mentioned F.I.R.

3. 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 the place of incident is located in a thickly populated area, but police failed to associate any private mashir to witness the alleged recovery despite having prior information, which fact alone creates reasonable doubt in the guilt of the applicant; that previously the applicant was falsely involved in FIR No. 81/2022 registered at P.S. Kalri

under section 6/9(c) of the Act, who after granting interim pre-arrest bail by the learned Additional Sessions Judge-I, (M.C.T.C.), Karachi-South vide order dated 14.03.2022 passed in Cr. Bail Application No. 862/2022, approached the concerned P.S. to join the investigation of said crime; however, the complainant falsely involved her in this case; that a news appeared in daily "Karachi 21 News" mentioning therein that the applicant was arrested from, Keamari; hence, it is a fit case of further enquiry, that the applicant is a lady, who is behind the bars since the day of her arrest; that the challan has already been submitted by the police; as such, custody of the applicant is not required by the police for investigation purpose; as such, applicant is entitled for the concession of bail.

4. On the other hand, learned D.P.G opposes grant of bail to the applicant on the ground that she was arrested on being found in possession of huge quantity of charas; that the applicant is also involved in other cases of similar nature; that the applicant has not alleged any enmity with the police officials for implicating her falsely in this case; that sufficient material is available with the prosecution to connect the applicant with the commission of alleged offence; hence, she is not entitled for 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 charas weighing 2500 grams was recovered from the possession of the applicant, which was sealed on the spot and sent to Chemical Analyzer for chemical examination on the same day. Positive report of Chemical Analyzer brings the case of the applicant within the scope of prohibition, contemplated by Section 51 of the Act. As per F.I.R., due to non-availability of private persons, police officials were made mashirs

of the arrest and recovery of the applicant. Even otherwise 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 her false implication is an issue that cannot be attended without going beyond the scope of tentative assessment, an attempt prohibited by law. The huge quantity of charas allegedly recovered from the possession of the applicant may have devastating effect on the society. Moreover, the applicant is also involved in Crimes No. 425/2020 & 81/2022, registered at P.S. Kalri under section 6/9(c) of the Act. 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 her on the ground of alleged benefit of doubt has been made out; hence, instant bail application is dismissed, 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