

IN THE HIGH COURT OF SINDH, AT KARACHI
Cr. Bail Application No. 838 of 2022

Applicant : Khuday Nazar s/o Hassan Khan, through
Mr. Raza Mukhtar, Advocate.

Respondent : The State, through Mr. Hussain Bakhsh
Baloch, Additional Prosecutor General.

Date of hearing : 26.05.2022
Date of order : 26.05.2022

ORDER

ZAFAR AHMED RAJPUT, J:- Through instant Criminal Bail Application, applicant/accused Khuday Nazar s/o Hassan Khan seeks post-arrest bail in Crime No. 663/2022, registered at P.S. Sachal, Karachi under section 6/9(c) of Control of Narcotic Substances Act, 1997. His earlier application for the same relief bearing No. 1636/2022 was dismissed by the learned M.C.T.C./1st Additional Sessions Judge Malir, Karachi vide order dated 20.04.2022.

2. Allegation against the applicant is that, on 11.04.2022 at 0130 hrs., he was arrested on spy information by a police party headed by SIP Imam Bux Ujjan of P.S. Sachal, Karachi on being found in possession of 1500 grams of charas at Madina Colony near Power House, Karachi, for which he 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 nothing was recovered from possession of the applicant and the alleged charas has been foisted upon him; that the instant FIR has been lodged by the complainant due to previous enmity with the applicant; that the officials of P.S. Sachal have been lodging F.I.Rs. against the applicant since 2019; that in the year 2019, the applicant was apprehended by the officials of P.S Sachal, who kept him in illegal detention, against that a Habeas Corpus Petition was filed before learned District & Sessions Court Malir, on

whose direction learned VIIth Judicial Magistrate Malir, Karachi conducted raid at P.S Sachal on 23.12.2019 and recovered the applicant; on enquiry of said Magistrate, the S.H.O. disclosed that the applicant was arrested in Crime No. 849/2019 registered under section 6/9(b) of the Control of Narcotic Substances Act, 1997 and the F.I.R. was in process; however, said S.H.O. failed to produce such memo of arrest and recovery; that, on 11.11.2021, the officials of said P.S. again conducted illegal raid upon the house of applicant and apprehended his minor son and nephew and kept them in illegal detention; against that HCP No. 398/2021 was filed, under section 491 Cr.P.C., wherein upon the directions of learned Sessions Judge Malir, Karachi raid was conducted by the learned XIIth Judicial Magistrate Malir, Karachi; however, the officials of P.S Sachal managed to remove the detainees, and after 24 hours of such raid they were booked in false F.I.R., whereafter Criminal Petition under section 22A & B, Cr. P.C. was filed against the officials of P.S. Sachal; 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 submitted challan; hence, his custody is no more required by the police for further investigation; that the trial of the applicant is likely to take some time and the applicant cannot be kept behind bars for an indefinite period; hence, he is entitled for the concession of bail. In support of his contentions, learned counsel has relied upon the cases of *Qurban Ali v. The State and others* (2017 SCMR 279), *Amjad Khan v. The State* (2022 MLD 520), *Ali Khan v. The State* (2022 P.Cr.L J. 690) and *Nasir Mahmood v. The State* (2021 P.Cr.L J. 443).

4. On the other hand, learned Additional Prosecutor General resists grant of bail to the applicant on the ground that he was arrested on being found in possession of huge quantity of charas, which was sent to the Chemical Analyzer for chemical examination on the very next day and his report is in positive; that capital punishment has been provided for the alleged offence under the Act; that

applicant is involved in other similar type of cases; that 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 heard learned counsel for the parties and perused the material available on record with their assistance.

6. It reflects from the record that the alleged recovered charas 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. 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 1500 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 with the prosecution 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 and/or borderline case has been made out; hence, instant bail application is dismissed, accordingly, with direction to learned trial Court to conclude the trial expeditiously and preferably within period of three months hereof.

7. 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