

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Cr. Bail Appln No.2006 of 2021

Date	Order with signature of Judge
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For hearing of bail application

11.11.2021

Mr. M.S. Bukhari, advocate for the applicant
Mr. Fahim Ahmed Panhwar, DPG

AFTAB AHMED GORAR, J.:- Applicant Rasheed Ahmed son of Arshad Ahmed seeks bail after arrest in case Crime No.394 /2021 registered at Police Station Gizri, Karachi under section 6/9(c) of the Control of Narcotics Substance Act, 1997.

2. Record shows that earlier bail application filed by the applicant before the 1st learned Additional Sessions Judge, Karachi (South) was rejected by order dated 10.09.2021.

3. Precisely facts unveiled from the FIR are that applicant was arrested by police party of Gizri Police Station headed by ASIP Muhammad Abbas Khan on 09.09.2021 at Jami Pulya, Khayaban-e-Abbasi, Phase-VII, DHA, Karachi, when he was found in possession 1160 grams chars and 52 grams Ice, which were taken into police custody in presence of the official witnesses.

4. Learned counsel for the applicant argued that applicant has falsely been implicated in this case with malafide intention and ulterior motives; there is no evidence against the applicant and there are contradictions in the evidence brought by the prosecution; the trial court has failed to appreciate facts and law involved in the case as such dismissed the bail application in mechanical and stereotyped order. He further submitted that the learned trial Judge has dismissed the bail

application of the applicant on the ground that he is involved in a heinous crime as such not entitled for bail. He contended that applicant has been involved in this case due to grudge and enmity with the local police. He further contended that applicant has filed this bail application on ground of hardship and liberty of the person. Lastly, learned counsel for the applicant prayed that applicant may be admitted to bail as the applicant is not previously convicted, hardened and disparate criminal. To support his contentions learned counsel for applicant placed reliance upon the cases of IMTIAZ AHMED V/S THE STATE (2017 SCMR 1194), ZAIGHAN ASHRAF V/S THE STATE (2016 SCR 18), HUMESH GULL V/S THE STATE (2015 SCMR 1092), ATTA ABBAS ZAIDI V/S THE STATE (PLD 2017 SINDH 120), GUL ZAMAN V/S THE STATE (1999 SCMR 1271), IMRAN AMIN V/S THE STATE (2002 MLD 1416), NAZIR HUSSAIN V/S SIA UL HAQ & OTHERS 1983 SCMR 72), MOUNAR & OTHERS V/S THE STAE (PLD 1990 SC 934), SHOAIB WARSI V/S THE STATE (2017 PLD KARACHI 243), THE SATE V/S SYED QAIM ALI SHAH (19982 SCMR 2192), SHAHID UMAR V/S NAB (C.P.No.5369/2017).

5. Conversely, learned DPG opposed the concession of bail to the applicant on the ground that the applicant is also involved in a heinous case of Charas and Ice of which heavy quantity was also recovered from his possession. Recovery of huge narcotics is enough to show prima facie involvement of the applicant. Learned Prosecutor has emphatically submitted that it is settled that at the bail stage the appreciation of facts in depth cannot be considered and the Court at the bail stage has to look into the material available on the record, to determine the involvement of the accused in the commission of offence. To support his contentions he has placed reliance on the cases reported as *SOCHA GUL V/S THE STATE* (2015 SCMR 1077) and *NASIRUDDIN ABBAS V/S THE STATE* (2005 UC (Supreme Court) 395.

6. Arguments advanced by learned counsel for the applicant and learned DPG are considered and perused the record available before me.

7. Perusal of the record reveals that applicant was arrested and found in possession 1160 grams chars and 52 grams Ice. The globalization of drug abuse has become one of the gravest problems confronting humanity. The world, at large, has waged an admirable war against drugs. Many developed and developing countries have achieved remarkable results by making huge investments to check narcotics trafficking while simultaneously reducing the in-house demand for illicit substances. The Control of Narcotics Substance Act, 1997 consolidates and amends the law relating to narcotic drugs and psychotropic substances. It controls and prohibits the prosecution, processing and trafficking of these substances. It also lays progressive punishments for narcotic offences. Section 51 of the Act provides that bail shall not be granted to an accused person charged with an offence under this Act or under any other law relating to narcotics where the offence is punishable with death. When the quantity of narcotics exceeds one kilogram, the case falls in Clause (c) of Section 9 of the Act, for which death penalty or imprisonment for life has been provided. Similarly, the discretion under Section 497 Cr.P.C can also not be exercised with regard to offences punishable with death or imprisonment for life unless the Court at the very outset is satisfied that such a charge appears to be false or groundless.

8. The larger interest of the public and State demands that in case of huge recovery of narcotics, the discretion under Section 497 of the Code of Criminal Procedure should not be exercised liberally. Generalizations on matters which rest on discretion and an attempt to discover formula of universal application when facts are bound to differ from case to case frustrate the very purpose of conferring discretion. No two cases are alike on facts and therefore, Courts have to be allowed a little free play in the joints if the conferment of discretionary power is to be meaningful. However, still the discretion must be permitted to

remain in the domain of discretion, to be exercised objectively and open to correction by the higher Courts. The Apex Court in the case of *THE STATE VERSUS JAVED KHAN* (2010 SCMR 1989) has made the following observations in a narcotic case:-

“S. 497(5)---Control of Narcotic Substances Act (XXV of 1997)---Ss.9(c) & 51(1)---Recovery of narcotic substances---Bail, cancellation of---Death sentence---Narcotic substance weighing 5-1/2 kilograms was recovered from accused who was granted bail by High Court---Validity--- Case of accused did not fall within prohibitory clause of S. 497 Cr.P.C., as the offence was covered by section 9 (c) of Control of Narcotic Substances Act, 1997, providing for various sentences, which not only fell within prohibitory clause of S. 497 Cr.P.C. but also attracted the bar contained in section 51(1) of Control of Narcotic Substances Act, 1997, which was specifically made applicable to those offences which provided for punishment of death sentence--- Approach of High Court releasing accused on bail was arbitrary, without application of mind and contrary to settled principles of law thus unsustainable---Supreme Court converted petition for leave to appeal into appeal and order admitting accused on bail was set aside and bail application before High Court was dismissed.”

9. The Apex Court, however, has in a recent case reported as *SOCHA GUL V/S THE STATE* (2015 SCMR 1077) while considering the offences punishable under the Control of Narcotic Substance Act, 1997 to be heinous in nature and against the society at large, repelled the views of this Court as under:-

“It is pertinent to mention here that offences punishable under CNS Act of 1997 are by its nature heinous and considered to be the offences against the society at large and it is for this reason that the statute itself has provided a note of caution under section 51 of CNS Act of 1997 before enlarging an accused on bail in the ordinary course. When we refer to the standards set out under section 497 Cr.PC for grant of bail to an accused involved in an offence under section 9(c) of 4 CNS Act of 1997, even on that basis we find that an accused charged with an offence, prescribing various punishments, as

reproduced above, is not entitled for grant of bail merely on account of the nature or quantity of narcotic substance, being four kilograms. Firstly, as deeper appreciation of evidence is not permissible at bail stage and secondly, in such situation, looking to the peculiar features and nature of the offence, the trial Court may depart from the normal standards prescribed in the case of Ghulam Murtaza (supra) and award him any other legal punishment. Thus, in our opinion, ratio of judgment in the case of Ghulam Murtaza (supra) is not relevant at bail state.”

10. The learned counsel for the applicant could not point out any mis-reading, non-reading of material and law available on the subject. Deeper appreciation of the record at bail stage cannot be gone into but only it is to be seen as to whether the accused is prima facie connected with the commission of the offence or not. A wise exercise of judicial power inevitably takes care of the evil consequences which are likely to flow out of its intemperate use. Every kind of judicial discretion, whatever may be the nature of the matter in regard to which it is required to be exercised, has to be used with due care and caution. In fact, awareness of the context in which the discretion is required to be exercised and of the reasonably foreseeable consequences of its use is the hall mark of a prudent exercise of judicial discretion. The case laws relied upon by the learned counsel for the applicant are not applicable as the same are distinguishable to the facts and circumstances of the case in hand.

11. For what has been discussed above, this Court is not inclined to accept the prayer of applicant for grant of bail and the bail application is accordingly dismissed.

12. Before parting, it needs not to make clarification that the observations recorded above, being necessary for deciding the instant bail application, are tentative in nature, therefore, the trial court shall not be influenced in any manner whatsoever.

JUDGE