

IN THE HIGH COURT OF SINDH, AT KARACHI

Crl. Bail Application No. 152 of 2013

Present:- Mr. Justice Irfan Saadat Khan

Date of hearing : 08.04.2013.

Applicant through : Mr. Muhammad Ali Waris Lari, Advocate

Respondent through : Ms. Rahat Ahsan, D.P.G.

ORDER

IRFAN SAADAT KHAN, J: Through this application the applicant/accused seeks bail in Crime No.908/2012, under Sections 6/9-B CNS Act, 1997, registered at P.S. Sohrab Goth, Karachi, as the bail plea filed in his behalf before the Special Court-II (C.N.S.), Karachi was dismissed vide order dated 29.01.2013.

Briefly stated the facts of the case are that on 21.12.2012 at about 0310 hours, the complainant SIP Ghulam Mustafa Chandio, Incharge of Police Chowki Ayyub Goth, P.S. Sohrab Goth, Karachi lodged the instant FIR stating therein that on the same day, he vide Roznamcha Entry No.19 at about 2200 hours alongwith ASI Badaruddin, HC Inayat Ali and PC Muhammad Sharif, duly armed, left in the official vehicle for patrolling. However, during patrolling, at about 0100 hours, when they reached at ramp Gabol Goth, they found three persons inside the bushes, who upon seeing the police party started firing. The police also fired in its defense and then encircled and apprehended them. The apprehended persons disclosed their names as Abdullah (present applicant/accused), Samiullah and Rafiullah. For the sake of brevity only the facts of present applicant/accused are mentioned, who was found having 30 bore pistol with four live rounds and one plastic shopper containing Charas weighing 500 grams. Thereafter, usual investigation was carried out and FIR was registered.

Mr. Muhammad Ali Waris Lari, Advocate has appeared on behalf of the applicant/accused and submitted that it has nowhere been mentioned in the FIR that upon apprehension of the applicant/accused how police officials instantly came to the conclusion that the applicant/accused was having charas weighing 500 grams when admittedly no scale was being carried with them as nothing has been mentioned in the FIR and challan about weighing of the said charas at the spot. He submitted that this alone has rendered the case of the prosecution to be highly doubtful. He further submitted that, according to him, there is a delay of 11 days in sending the material recovered for chemical examination. He further submitted that the case has been foisted upon the applicant/accused due to the

enmity with the police department. He submitted that the applicant/accused has already been enlarged on bail on the ground of further enquiry in respect of other charges leveled against him under Section 353, 324 & 34 PPC. He further submitted that since the bail has already been granted to the applicant/accused in respect of the main charges, applicant/accused be enlarged on bail in respect of the present charge also, since, according to him, this is a fit case of further enquiry. He submitted that though the alleged incident was shown to have taken place on 21.12.2012 but charge sheet was submitted on 08.01.2013, which is evident from the endorsement made on the charge sheet, which has made the case to be highly doubtful and is in violation of provision of Section 173 Cr.P.C. He further submitted that the impugned order is also not correct since it is a consolidated order, whereas learned Judge should have decided each case separately since separate FIRs have been registered against three different persons, which is not in accordance with law.

Ms. Rahat Ahsan, D.P.G., on the other hand, has halfheartedly opposed the bail application and submitted that FIR has been registered promptly and the recovered articles were sent on 25.12.2012 and received on 26.12.2012 for chemical examination, hence, there is no delay and the report is also in positive.

I have heard both the learned counsel at some length and have perused the record. There is no denial to the fact that no scale was available with the police at the time of apprehension of the applicant/accused and how, without measurement, the police had instantly come to the conclusion that the contraband item recovered is of 500 grams which has not been explained. It is also an admitted fact that the applicant/accused has already been granted bail by the trial Court in respect of the charges leveled upon him under Sections 353, 324 & 34 PPC by specifically mentioning that these charges are yet to be determined.

In the light of what has been stated above the instant case appears to be that of further enquiry. This application is thus allowed and the applicant/accused is enlarged on bail subject to furnishing surety in the sum of Rs.100,000/- (Rupees One Lac) and P.R. Bonk in the like amount to the satisfaction of the trial Court. Needless to mention that observations made hereinabove are only tentative in nature.

Karachi.
Dated: 08.04.2013.

JUDGE