

IN THE HIGH COURT OF SINDH, AT KARACHI
Cr. Bail Application No. 43 of 2022

Applicant : Ali Hamza s/o Sadiq Javed, through
Mr. Jamil Ahmed Javed, advocate.

Respondent : The State, through Mr. Muhammad Ahmed,
Assistant Attorney General.

Date of hearing : 24.03.2022
Date of order : 24.03.2022

ORDER

ZAFAR AHMED RAJPUT, J:- Through instant Criminal Bail Application, applicant/accused Ali Hamza s/o Sadiq Javed seeks post-arrest bail in Crime No. 1015 of 2021, registered at P.S. 2-Battalion, Pakistan Coast Guard, Karachi under section 9(c) of the Control of Narcotic Substances Act, 1997 (*the "Act"*). His earlier application for the same relief in Special Case No. 38 of 2021 was dismissed by the learned Special Court-I (Control of Narcotic Substances) Karachi, vide order dated 01.11.2021.

2. As per F.I.R., on 29.05.2021 at 1750 hours, the applicant was arrested by Soobedar Tahir Iqbal of Pakistan Coast Guard at Coast Guard Check Post, situated at Dumba Goth, Super Highway, Karachi on being found in possession of 20 kilograms of Bhang (hemp) while travelling in passenger's Coach Al-Madani, bearing Registration No. JB-1412, for which, the applicant was booked in the aforesaid F.I.R.

3. Learned counsel for the applicant contends that the applicant is innocent and has falsely been implicated in this case; that nothing was recovered from the possession of the applicant and the alleged recovered bhang (hemp) has been foisted upon him; that the applicant is confined in judicial custody since his day of arrest and challan has been submitted; hence, his custody is no more required for further investigation; that the trial of the case is likely to take some time and the applicant cannot be kept behind bars for an indefinite period; that the report of the Chemical Analyzer does not support the case of the prosecution and it is yet to be determine if the alleged recovered substance comes within the purview of cannabis (hemp), hence the guilt of the applicant requires further inquiry entitling him for the concession of bail.

4. On the other hand, learned Assistant Attorney General resists granting of bail to the applicant on the ground that he was arrested on being found in possession of huge quantity of narcotic substance/Bhang and sufficient evidence is available with the prosecution to connect him with the commission of alleged offence.

5. Heard learned counsel for the parties and perused the material available on record with their assistance.

6. It appears that the applicant is confined in judicial custody since 29.05.2021 and police has submitted challan; hence, his physical custody is not required by the police for further investigation. It further appears that as per report of Chemical Analyzer, the sealed parcel contained "*dried greenish broken leaves straws and seeds*".

7. The term "Bhang" (cannabis-hemp) has been defined in Section 2(d)(ii) of the Act as "*the flowering or fruiting tops of the cannabis plant (excluding the seed and leaves when not accompanied by the tops) from which the resin has not been extracted, by whatever name they may be designated or known*". Hence, if "Bhang" (hemp) contains specific parts i.e. "flowering or fruiting tops of the cannabis plant" (excluding the seed and leaves when not accompanied by the tops) from which the resin has not been extracted, would be covered by Section 9 of the Act. Perusal of record shows that there is no specification of the part of the Bhang allegedly recovered from the applicant, and as per report of the Chemical Analyzer the alleged substance was *dried greenish broken leaves straws and seeds*, and not the *flowering or fruiting tops of the cannabis plant*; therefore in the light of dictum laid down in the case of *Muhammad Zafar v. The State and others (2018 MLD 1416)*, it would be seen during trial that the case against the applicant falls within ambit of section 2(d)(ii) of the Act or under the Prohibition (Enforcement of Hadd) Order, 1979.

8. Under the circumstances, the case against the applicant requires further inquiry; hence, the instant application is allowed by admitting the applicant to post-arrest bail in aforesaid crime/offence subject to furnishing by him solvent surety in the sum of Rs.200,000/- (Rupees Two Lacs only) and P.R. Bond in the like amount to the satisfaction of the trial Court.

9. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicant/accused on merits. However, in case the applicant misuses the concession of bail in any manner, the trial Court shall be at liberty to cancel the same after giving him notice, in accordance with law.

JUDGE

Athar Zai