ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Crl. Bail Application No. 1023 of 2020.

Date | Order with signature of Judge

For hearing of bail application.

07th September 2020

Mr. Khaleeq Ahmed, advocate for applicant/accused.
Ms. Abida Perveen Channer, Special Prosecutor ANF.

By order dated 11.02.2019 in Crl. Bail Application No. 1301 of 2018 bail application preferred by the present applicant was dismissed on merits.

2. Precisely, the relevant facts of the prosecution case are that SI Manoour Rasheed lodged FIR on 01.03.2018 at about 1400 hours wherein he stated that he, upon receiving spy information regarding smuggling of huge quantity of narcotics by Asghar Aman r/o Peshawar near Ronaq-e-Islam School Kharadar, left P.S along with his subordinate staff and reached at the pointed place where on the pointation of spy he arrested accused with white sack which opened at spot and found 16 spring baskets of wood in whose bottom Charas in shape of slabs wrapped in plastic sheets was lying which was weighed and each slab was of 1200 grams totaling 19.200 K.Gs. Samples of 10 /10 grams were separated each slab for chemical analyst and remaining charas was sealed at the spot in presence of mashirs. Thereafter, accused and property were brought at

police station where FIR was lodged against the accused on behalf of state under the above referred sections.

3. It would be conducive to refer paragraph Nos. 7, 8, 9, 10 and 11 of earlier order, which are that:-

> "7. Since the instant case involves *huge* quantity of narcotics and to have *criterion* for grant of bail in such like cases, it would be relevant to refer the case of *Socha Gul v. State* 2015 SCMR 1077 wherein it is *categorically* observed as:
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> > ***"8.*** *It is pertinent to mention here that offences punishable under C.N.S 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 C.N.S 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.P.C for grant of bail to an accused involved in an offence under section 9(c) of C.N.S Act of 1997, even on the 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 narcotics 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 stage.
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> The above makes it quite clear and obvious that if the accused appears to be linked with an offence, falling under section 9(c) CNC then mere plea of ***'not much quantity'*** alone would not be of any help for grant of bail rather the accused, before seeking his release on bail, shall be required to make out a clear case of ***further inquiry.*** A successful bringing of the case within subsection (ii) of section 497 Cr.PC would be the *sole* criteria to grant of bail by skipping the bar of section 51 of the Act.
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> 8. Here in this case, applicant was arrested and huge quantity of narcotic substance was recovered from him; prosecution witnesses have supported the prosecution case and *prima facie* there has been placed nothing on record to establish any *mala fide* or serious *enmity* against such officials of ANF. So far as the contention of the learned counsel for the applicant that no private persons of the locality was

associated as a witness or mashir though it was thickly populated area, is not attracting in view of section 25 of the Control of Narcotic Substances Act, 1997 by virtue of this provision, the applicability of section 103, Cr.P.C. has been excluded in the cases of recovery of narcotics. Plea of applicant that charas was foisted upon him cannot be entertained at such stage as this fact could only be ascertained after recording of evidence and at bail stage deeper appreciation of evidence is not permissible under the law. Thus, tentative assessment of material available on record, *prima facie* does not lead to a conclusion that there are no *reasonable grounds* exist to believe it is a case of further enquiry.

9. In the case of *Muhammad Akhtar v. State & Ors* 2017 SCMR 161, the honourable Apex Court dismissed the bail while holding as:-

> "2. The petitioner had been apprehended red-handed while in possession of bhiki (poast) weighing 30 kilograms and a sample of the recovered substance had subsequently been tested positive by the Chemical Examiner. The prosecution has relied upon statements of some prosecution witnesses who had witnessed the alleged recovery and apparently the said prosecution witnessed had **no ostensible reason to falsely implicate the petitioner** in a case of this nature. The case against the petitioner is **hit by section 51 of the Control of Narcotics Substances Act, 1997.** This petition is , therefore, dismissed and leave to appeal is refused.

10. In another case of **Ayaz Pathan v. State (2013 YLR 2560),** the learned Single Bench of this court while dismissing bail in a case, registered under section 9(c) of CNS, made the following observations:--

> "*In this case prosecution witnesses had no any enmity whatsoever with the applicant to foist such a huge quantity of nine kilograms of Charas upon him. Chemical Examiner report regarding recovered Charas was found positive, it is proved that substance recovered from the applicant was Charas; therefore, the prosecution discharged its initial onus while proving that the substance recovered from him was contraband Charas. There is sufficient material available on record which shows that the applicant was found sitting on front seat of the vehicle and he was found responsible for transportation of narcotics. The defence plea propounded by the applicant that the narcotic was not recovered from his possession is not true. Proper reading of the evidence on the record and the factual concluding drawn by the learned trial Court while deciding the earlier bail application are not shown to suffer from any misreading or non-reading of evidence. The alleged offence is heinous one, falling within prohibitory clause. So far as the contention of the learned counsel for the applicant that respectable inhabitants of the locality did not associate as a witness or mashir is not attracting in view of section 25 of the Control of*

> *Narcotic Substances Act, 1997. The applicability of section 103, Cr.P.C. has been excluded in the cases of recovery of narcotics.*"

> 11. As to the case law cited by the learned counsel for the applicant, in support of his submissions, the facts and circumstances of the said case is distinct and different from the present case, therefore, none of the precedents cited by the learned counsel are helpful to the applicant. In the mentioned circumstances, I do not find the applicant/accused entitled for bail at this stage of case. Accordingly, the bail plea is hereby dismissed. However, while parting the trial Court is directed to conclude the trial within a period of six months."

Perusal of above reveals that that bail application of present applicant was dismissed on merits, however directions were issued to the trial Court to conclude the trial within six months. Needless to mention that directions to conclude the trial in any way cannot be considered fresh ground to entertain the bail; however, learned counsel for the applicant has insisted that present applicant is entitled for grant of bail on the provisions of statutory ground as enshrined in 497 Cr.P.C. subsection 3 Cr.P.C. He has relied upon case law reported as 2017 SCMR 1194 though I have examined the same and suffice to say that it is not specific with regard to application of statutory ground in Narcotics cases. In the case of Sher Ali alias Sheri v. The State (1998 SCMR 190), wherein it is held that:--

> "We are in respectful agreement with the above enunciation of law. We are also inclined to hold that in order to bring an accused person within the compass of a hardened, desperate or dangerous criminal, it is not necessary to prove that he had been previously convicted for the reason that previously convicted persons are separately dealt with in the above fourth proviso as is evident. It must, therefore, follow that if the prosecution places on record sufficient material before the Court to indicate that on the basis of tentative assessment the accused persons involved can be treated as a hardened, desperate or dangerous criminal or a person involved in terrorism, the bail on the ground of statutory delay can be denied'.
> (Underlining is supplied for emphasis)

10. The guidelines, provided by the Honourable Supreme Court, have made it quite clear that it is not the criminal record of the 'accused' alone for bringing or getting out of the 'case' of accused from exceptions

of fourth proviso but the 'offence', impact thereof and manner of committing thereof is also to be kept in view. The offence with which the applicant is charged is an offence against society and it is well settled that anyone involved in narcotics case, would be considered as hardened criminal and for hardened criminal statutory ground is not applicable.

Accordingly, instant bail application is dismissed.

JUDGE

Sajid