

4. Learned counsel for the applicant, *inter alia*, contends that applicant is involved in the present case with malafide intention due to enmity; that nothing has been recovered from the possession of accused and charas has been foisted upon the applicant/accused; that police failed to associate any private person from the locality to witness the proceedings, hence the case of the applicant requires further inquiry; that the applicant/accused is a juvenile at the time of alleged incident, therefore, he deserves the leniency for being a minor.

5. Learned Deputy P.G. Sindh has vehemently opposed the bail application and contended that huge quantity of Charas was effected from the possession of accused; the offence with which the applicant is charged falls within the prohibitory clause and is offence against society. With regard to the association of any respectable inhabitant of the locality as a witness or mashir, under 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. He lastly contended that mere tender age of an accused is no ground for extending him concession of bail and prayed for dismissal of the instant application.

6. Heard and perused the record.

7. The offence of Narcotics is an offence against society at large and is heinous in nature. 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:

*“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.*

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 police officials. With regard to 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. With regard to learned counsel for the applicant/accused that he is juvenile and deserves to be released on bail, the date of birth of the applicant/accused as per documents attached with the application is

12.04.2002, whereas the alleged occurrence took place on 15.02.2021, if his age is counted from the date of birth till date of occurrence, it came out 18 years 9 months and 03 days. Section 10 of the Juvenile Justice System Ordinance, has provided some concession for the accused, who are under the age of 15 years, but there is a proviso under section 10(7) of the Juvenile Justice System Ordinance, according to which, if they are involved in a case of heinous nature, then they may not be released on bail. While the age of applicant /accused is above 15 years. The person who is charged for a crime of heinous nature cannot claim any premium, on the basis of his minor age, because mere minority per-se, is no ground for grant of bail. Section 10 of the ibid Ordinance, does not give the concession of bail to a juvenile accused in an offence falling within the Prohibitory Clause of Section 51 of the Control of Narcotic Substance Act, 1997, nor the tender age, can be used as a license by a juvenile to commit crimes. In genuine cases, it may be invoked in favour of the accused to get him released on bail, but it is noticed that this concession is being misused in the society by the youngsters. So, to curb the menace of rampant crimes, by the youngsters, it is in the interest of society, not to allow them bail on such technical grounds to discourage them in commission of crimes for their better future. No doubt some concession could be extended to the juveniles during trial, but not at bail stage.

11. In the above circumstances, prima-facie, there are reasonable grounds to believe that applicant/accused has committed alleged offence, therefore, I am of the considered view that the learned counsel for the applicant has not been able to make out a case for grant of bail. The bail application being devoid of merit is **dismissed** accordingly.

12. Needless to mention that the above observations are purely tentative in nature and the same are only meant for the purpose of this bail application and would have no impact or effect on any party during the trial. Besides, trial court shall conclude the trial within six months.

J U D G E