

IN THE HIGH COURT OF SINDH, AT KARACHI
Cr. Bail Application No. 492 of 2022

Applicant : Muhammad Asghar s/o Ali Muhammad, through
Mr. Malik Muhammad Tariq, advocate

Respondent : The State, through Mr. Faheem Hussain Panhwar,
D.P.G.

Date of hearing : 07.04.2022
Date of order : 07.04.2022

ORDER

ZAFAR AHMED RAJPUT, J:- Applicant/accused Muhammad Asghar s/o Ali Muhammad being abortive to get the relief of post-arrest bail from Model Criminal Trial Court/Ist Additional Sessions Judge Malir, Karachi in Cr. Bail Application No. 484 of 2022 vide order, dated 11.02.2022, through instant application seeks the same relief from this Court in Crime/FIR No. 49 of 2022, registered under sections 6/9(c) of the Control of Narcotic Substances (Sindh Amendment) Act, 2021 at P.S. Malir City, Karachi.

2. Allegation against the applicant is that, on 26.01.2022 at 1640 hours, he was arrested at Khayaban-e-Muhammad gate near Gharibabad, Malir City, Karachi by a police party headed by SIP Moinullah Hashmi of P.S. Malir City, Karachi on being recovered 160 grams of heroin, for which he was booked in the aforesaid F.I.R.

3. The learned counsel for the applicant contends that the applicant is innocent and has falsely been implicated in this case; that nothing was recovered from possession of the applicant and the alleged recovered heroin has been foisted upon him to justify his illegal apprehension; that applicant was taken by the police officials from his house on 24-01-2022 at about 3/4:00 hours and on the next day his wife moved an application to S.H.O. P.S. Malir City and S.P. District Malir Karachi through Perfect Express Courier vide Consignment Note No.2620285 & 2620286; that the place of alleged incident is located in a highly thickly populated area but police failed to associate any private mashir to witness the alleged recovery despite availability of private persons at the place of occurrence, which fact alone creates doubt in a prudent mind about the guilt of the applicant, benefit whereof always goes in favour of the applicant even at bail stage; that the applicant is confined in judicial custody since his day of arrest and police has submitted challan; hence, his custody is no more required by the police 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; hence, the applicant is entitled for the concession of bail.

4. On the other hand, learned D.P.G. resists grant of bail to the applicant on the ground that he was arrested on being found in possession of huge quantity of heroin; that the applicant has not alleged any enmity with the police officials for implicating him falsely in this case; that sufficient evidence is available with the prosecution to connect him with the commission of alleged offence.

5. I have given due consideration to the arguments advanced by both the parties and also perused the material available on record.

6. Perusal of the record shows that the recovered heroin weighing 160 grams was sealed on the spot and sent to Chemical Analyzer for chemical examination duly received on the next day. Positive report of Chemical Analyzer brings the case of the applicant within the scope of prohibition, contemplated by Section 51 of the Act. Section 25 of the Act excludes the applicability of Section 103, Cr. P.C.; therefore, association of witnesses from the public is not mandatory in the cases registered under the Act. It has been observed by the Apex Court in the case of *Muhammad Noman Munir v. The State and another* (2020 SCMR 1257), while rejecting bail plea in a case of 1380 grams of cannabis with 07 grams of heroin, as under;

“Insofar as non-association of a witness from the public is concerned, people collected at the scene, despite request abstained to assist the law and it is so mentioned in the crime report itself, a usual conduct symptomatic of societal apathy towards civic responsibilities. Even otherwise, the members of the contingent being functionaries of the State are second to none in their status, with their acts statutorily presumed, prima facie, as intra vires.

7. So far application allegedly moved by the wife of applicant is concerned, the said plea was also taken before the learned trial Court in Cr. Bail Application No. 484 of 2022; however, the same was declined vide order dated 11.02.2022 by observing that verification report was called from concerned S.H.O., who submitted report that no such

application either in person or through courier has been received by them, while the report of the courier i.e. Perfect Express shows that on 24-01-2022 Mst. Asma booked shipment (letter) but she got returned the same on the same day, which means that it was never delivered to any person and even the courier service is unaware about the contents in such letter. Hence, the alleged plea of the applicant prima facie appears to be without any substance. The heroin allegedly recovered from the possession of the applicant can have devastating effect on the society. *Prima facie*, sufficient material is available on record to connect the applicant with the commission of alleged offence and no case for granting bail to him on the ground of alleged benefit of doubt has been made out; hence, instant bail application is rejected, accordingly.

8. Needless to mention here that the observations made hereinabove by this Court are tentative in nature and the same shall not influence the trial Court while deciding the case of applicant on merit.

JUDGE

Athar Zai