

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No. 2269 of 2022

Date *Order with signature of Judge*

For hearing of Bail Application.

11.01.2023

Mr. Niaz Ali Rawat K. Magsi, Advocate for the Applicant.
Mr. Khadim Hussain, Addl. Prosecutor General, Sindh.

ORDER

Muhammad Saleem Jessar, J:- Through this bail application, Applicant Abdul Rasheed seeks his release on post arrest bail in Crime No.266/2022 of P.S Mochko, Karachi, under Section 6/9-C of CNS Act. The applicant preferred his bail plea before the trial Court, which was turned down by means of order dated 26.10.2022; hence, he has approached to this Court through this Application.

2. Since the facts of the prosecution case are already mentioned in the impugned order as well as FIR, which are annexed with Court file, therefore, there is no need to reproduce the same.

3. Learned counsel for the applicant submits that son of the applicant namely Sameer was murdered by one Sheeraz and two unknown persons on 21.05.2022 and to such effect, brother-in-law of the applicant namely Nadeem got registered FIR No.274/2022 with P.S Saeedabad, Karachi on 25.05.2022; however, nominated accused of said murder FIR has not been arrested by the police. Next submits that accused nominated under FIR No.274/2022 is an influential person, therefore, he has been exerting illegal pressure upon the complainant party/applicant to enter into compromise and on refusal he with the help of police has managed to get applicant arrested and thereby has implicated him in this false case. In support of his contention, learned counsel for the applicant submits a copy of FIR, which is taken on record. He further submits that wife of the applicant has moved an application on 29.06.2022 to learned Addl. Sessions Judge, Karachi (East) regarding arrest of the applicant. Such application has also been filed by him as Annexure-A/3 (available at page-37 of the Court file). He next

submits that these are malafide on the part of police which resulted implication of applicant in this crime. He further submits that as far as punishment provided by the law for instant offence is concerned, per newly amendment vide Act XX of 2022 promulgated on 05.09.2022 through Notification dated 06th September, 2022, as per table at series No.6, punishment for possessing 100 grams to 499 grams of Heroin and Morphine is 10 years but shall not be less than 7 years along with fine, therefore, when statue provides two punishments, the lesser one may be considered; hence, submits that case against applicant, in view of the submissions, requires further inquiry and prays for bail.

4. On the other hand, learned Addl. P.G, Sindh appearing for the State, opposes the bail application and submits that charge before trial Court has been framed, therefore, it will be appropriate for the applicant to proceed with the trial instead of pressing this bail application. He; however, could not controvert the fact that law provides two punishments and lesser one is to be considered at bail stage.

5. **Heard arguments, record perused.** Admittedly, the applicant has been found in possession of 160 grams of Crash/Heroin but before discussing gravity of offence, it will be appropriate to go through the law as per new Amendment, 2022; whereby, Section 9 of CNS Act has been substituted as under;_

“9 Punishment for contravention of sections 6, 7 and 8. – (1) Whoever contravenes the provisions of sections 6, 7 and 8 regarding narcotics drugs shall be punished with punishment as given in column (3) of the TABLE below with regard to offence committed as mentioned in column (2) thereof, namely:--

TABLE

S. No.	Offence		Punishment
	Type of Narcotics	Quantity	
(1)	(2)		(3)
6.	Heroin and morphine	(a) Up to 99 grams	Imprisonment which may extend to seven years but shall not be less than eighteen months along-with fine which may be up to twenty five thousand rupees.
		(b) 100 grams to 499 grams	Imprisonment which may extend to ten years but shall not be less than seven years along-with fine which may be up to one hundred and twenty-five thousand rupees but not less than twenty-five thousand rupees.

6. Per newly amended Act, punishment provided by the law for possessing 100 grams to 499 grams of Heroin or Morphine, may extend to 10 years but shall not be less than 7 years. It is settled law that when the statute provides two punishments then lesser punishment may be considered particularly at bail stage. In the instant case, second punishment is provided as 7 years which does not exceed the limits of prohibitory clause of section 497 Cr.P.C. Hence, in my opinion, the applicant has made out a good prima facie case for his release on bail. Consequently, instant bail application is hereby allowed. Applicant **Abdul Rasheed son of Khuda Bux**, shall be released on bail subject to furnishing his solvent surety in the sum of Rs.100,000/- (Rupees One Lac Only) and PR Bond in the like amount to the satisfaction of learned trial Court.

7. It need not to iterate that the observation(s) made hereinabove is/are tentative in nature and shall not prejudice the case of either party during trial. However, the learned trial Court may proceed against the Applicant, if he will be found misusing the concession of bail.

8. This Criminal Bail Application is disposed of in the terms indicated above.

JUDGE

Zulfiqar/P.A