

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH KARACHI**

**Cr. Bail No.2324/2022**

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**DATE**

**ORDER WITH SIGNATURE OF JUDGES**

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**For hg of bail.**

**13.1.2023**

Mr. Jameel Ahmed Shah, Advocate for applicants.

Ms. Rahat Ahsan, Addl.PG

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**Omar Sial, J.:** Mohammad Shareef has sought post arrest bail in crime number 234 of 2022 registered under section 9(b) of the CNS Act, 1997 at the Thatta police station on 07.12.2022. Earlier his application seeking bail was dismissed on 19.10.2022 by the learned Special Judge-1, Control of Narcotic Substances in Thatta.

2. A background to the case is that on 01.10.2022, a police party led by S.I. Zafar Ali Zaur was on normal patrol duty when it received spy information that some persons were openly selling charas and methamphetamine at the Baghar Mori Stop. The police party reached the identified place and apprehended the applicant from whose possession it recovered 80 packets of heroin weighing an aggregate of 40 grams, 20 packets of charas weighing a total of 60 grams and a small plastic bag containing 60 grams of methamphetamine.

3. Learned counsel has argued that section 103 Cr.P.C. was violated and that the quantity allegedly recovered from the applicant was substantially low. Learned APG supported the impugned order. I have heard the counsels. My observations and findings are as follows.

4. The argument of the learned counsel regarding non-compliance of section 103 Cr.P.C. holds little weight. Section 25 of the CNS Act, 1997 excludes the applicability of section 103 Cr.P.C. and the same has been reiterated by the Honorable Supreme Court of Pakistan in a number of cases; one such case being **Tariq Mehmood vs The State (PLD 2009 SC 39)**.

5. The learned counsel is correct that the aggregate weight of the narcotic seized from the applicant makes the offence with which he is

charged fall under the ambit of section 9(b) CNS Act, 1997 and that the superior courts of the country have historically shown some leniency at the bail stage in such cases. I am also cognizant of the principle stated in the case of **Tariq Bashir vs The State (PLD 1995 SC 34)** that bail should normally be granted if the sentence of an offence falls within the non-prohibitory clause of section 497 Cr.P.C. I am of the view however that in the present case, alleged recovery of heroin and methamphetamine from the applicant, makes it an exceptional ground and therefore the exception given in the Tariq Bashir case will come into play. Both substances have the potential of destroying the whole households and families of the victims of the drug trade. No leniency on account of the reduced weight of narcotics can therefore be shown.

6. Upon a tentative assessment it appears that the applicant was apprehended red-handed in possession of substances/narcotics prohibited under the CNS Act, 1997. The Chemical Analysers report dated 21.10.2022 has also opined that the substances seized were indeed charas, heroin and methamphetamine. No ill-will or malafide was argued or is borne out from the record which might have motivated the police to register a false case against the applicant.

7. In view of the above, it appears that the prosecution has sufficient evidence to establish a nexus of the applicant with the crime complained of. Bail application is, therefore, dismissed.

**JUDGE**