

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Cr. Bail Application No.S-1153 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on office objections.
2. For hearing of main case.

24.11.2022.

Mr. Abdul Azeem Abbasi, Advocate for applicant.
Mr. Imran Ali Abbasi, Assistant P.G Sindh.

ORDER

Muhammad Saleem Jessar, J.- Through this application, applicant Khuda Dad seeks his admission on post arrest bail in Crime No.139 of 2022 registered at P.S Sanghar for offence under Section 9(c) Control of Narcotic Substances Act, 1997. Prior to this application, the applicant had filed Bail Application No.898 of 2022 before the trial Court which by means of order dated 18.10.2022 was declined.

2. Since the facts of prosecution case are already mentioned in F.I.R as well as impugned order passed by Special Judge for CNS Sanghar; therefore, there is no need to reproduce the same in order to save precious time of the Court.

3. The main ground for seeking bail in this case is that one Shahdad Brohi had filed Direct Complaint No.03 of 2021 before IInd Additional Sessions Judge, Sanghar (Re: Shahdad v. Maqsood Raza Manganhar and others) in which applicant Khuda Dad was shown and examined as witness. The said Direct Complaint was filed against the Police of P.S Sanghar and the applicant being witness was examined before Civil Judge / Judicial Magistrate-II, Sanghar on 13.07.2021 where he deposed in following terms:-

“To SELF

Father of Ghulam Haider was watchman in the Dubai City due to paralysis attack he was unable to perform his duty. Manager of Dubai City employed Ghulam Haider as watchman in place of his father. At 7:30 pm I was along the complainant Shahzad went to Dubai city in order to bring meal for Ghulam Haider, after handing over meal to Ghulam Haider we were returning to our home, we saw one brown colour car arrived at the Dubai City and SHO PS Sanghar Masood Raza Manganhar along with Abdul Hameed alias Lala Hameed, Tanver Jatt and one unknown person

came out of car and kidnapped Ghulam Haider. Therefore I informed to my cousins, thereafter we went to PS Sanghar but SHO did not pay any attention to our grievance. Thereafter we informed this to media and human right. SHO PS Sanghar demanded one lac and SHO said that other he will make full fry of Ghulam Haider. On 08.04.2021 we filed application for recovery of Ghulam Haider before Honourable Court of Session but he was not recovered from PS Sanghar. Again we filed petition in High Court at Hyderabad. On 15.4.2021 we saw on social media that Ghulam Haider was admitted at Hospital at Hyderabad. I went to Ghulam Haider, he disclosed that 4th person was Naeem Arain.”

4. Learned Counsel submits that said Direct Complaint was brought on record and was tried by the Court of IInd Additional Sessions Judge, Sanghar, where it was finally decided on 09.04.2022. Learned Counsel further adds that after final decision of said complaint, the Police of P.S Sanghar in order to take revenge of their grudge have cooked up instant case by filing instant F.I.R against applicant on 20.09.2022 and alleged contraband as shown has been foisted against him. He; therefore, submits that *mala fide* on the part of police/prosecution has been established; hence, case against the applicant requires further inquiry. He next submits that accusation against the applicant is yet to be established and subsequently determined by the trial Court after recording evidence. He further adds that applicant is *Hafiz-e-Qur'an* and also *Pesh Imam* of a Mosque and used to offer prayers to the community people. He; therefore, prays that applicant may be enlarged on bail.

5. Learned Assistant P.G Sindh opposes the bail application on the ground that applicant has been shown arrested on spot alongwith alleged contraband; therefore, is not entitled for concession of bail. He; however, could not controvert the fact that applicant was also witness under Direct Complaint filed by one Shahdad Brohi against police officials of P.S Sanghar.

6. Heard and record perused.

7. No doubt, the applicant has been nominated under the F.I.R and has been shown arrested alongwith contraband but *mala fide* on the part of police as per documents produced by the Counsel today is admitted and has not been denied by Assistant P.G. The applicant is alleged to have been found in possession of 1800 grams of chars; yet the enmity with Police has also been established; therefore, veracity of prosecution evidence is to be gauged in the light of enmity between the applicant and police. It is well settled principle of

law that benefit of doubt if arises in a case can be extended to a person even at bail stage. It is also settled law that every accused is presumed to be blue eyed boy of the law until and unless he is found guilty of the charge and law cannot be stretched upon in favour of the prosecution particularly at bail stage. In the backdrop of enmity with police the accusation against the applicant is yet to be established by the prosecution and subsequently is yet to be determined by the trial Court.

8. In my humble view and in view of existing circumstances, the case against the applicant requires further inquiry as envisaged under sub-section (2) of Section 497 Cr.P.C. Consequently, instant bail application is hereby allowed. The interim pre-arrest bail already granted to applicant on 28.11.2022 and 09.12.2022 is hereby confirmed on same terms and conditions. The applicants present are directed to continue their appearance before the trial Court till final decision of the main case.

9. It is pertinent to mention here that the observation(s) made hereinabove is/are tentative in nature and shall not prejudice the case of either party during trial.

JUDGE

Shahid

