

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Cr. Bail Application No. 1955 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGES
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For hearing of bail application.

22nd November, 2021

Mr. Niaz Ali, Advocate for applicant.

Mr. Khadim Hussain, Addl.P.G.

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Omar Sial, J: Hajra has sought post arrest bail in crime number 478 of 2021 registered under sections 6 and 9(c) of the Control of Narcotic Substances Act, 1997 at the Chakiwara police station. Earlier, her application seeking bail was dismissed on 7-10-2021 by the learned Sessions Judge, South.

2. Facts of the case are that on 2-10-2021, a police party led by A.S.I Azhar Hussain of the Chakiwara police station was on patrol duty when it received information that a woman named Hajra (the applicant) was busy in selling "crystal". The police party reached the identified place and arrested the applicant with 62 grams of "crystal".

3. Learned counsel for the applicant has argued that the applicant is a married lady; that she should be granted bail on the basis of her gender; that section 103 Cr.P.C. was not followed by the police in the arrest and recovery of the applicant; that the punishment for the offence does not fall within the prohibitory clause of section 497 Cr.P.C. Learned Additional Prosecutor General has opposed the grant of bail.

4. I have heard the learned counsel for the applicant and the learned Additional Prosecutor General.

5. "Crystal" is broadly a mixture of heroin and caffeine and prima facie a prohibited substance under the Control of Narcotic Substances Act, 1997. At the moment the quantity of the recovered drug makes its possession punishable under section 9(a) of the CNS Act 1997. Section 9(a) carries a potential sentence of up to 2 years and the applicant has been in custody for a period of one month already. It appears that the reason which swayed the learned trial court to

decline bail was that the offence committed was punishable with death or life imprisonment. The learned trial court has made this conclusion on the basis of The Control of Narcotic Substance (Sindh Amendment) Act 2021. It is yet to be determined whether a provincial enactment can validly amend a federal legislation. Keeping in view the small quantity of crystal ostensibly recovered coupled with the punishment prescribed for it as well as the gender of the applicant, I am inclined to admit her to post arrest bail.

6. Bail application is allowed subject to the applicant furnishing a solvent surety in the sum of Rs. 200,000 and a P.R. Bond in the like amount to the satisfaction of the learned trial court.

JUDGE