

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Bail Application No. 352 of 2022

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

5th April, 2022

Syed Asad Ali Shah, Advocate for applicants.
Mr. Talib Ali Memon, APG.

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Omar Sial, J: Noman and Naeem have sought post arrest bail in crime number 565 of 2021 registered under sections 6 and 9(c) of the Act of 1997 at the Sharafi Goth police station. Earlier, their application seeking bail was dismissed on 24.12.2021 by the learned Sessions Judge, Malir.

2. A background to the case is that the aforementioned F.I.R. was registered on 30.11.2021 on the complaint of S.I. Raza Muhammad Solangi. The complainant recorded that a police party led by him was on normal patrol duty when it received information about two persons busy in the act of selling charas. The police party reached the identified place and apprehended the two suspects who happened to be the two applicants. 1595 grams of charas were found in the possession of Noman whereas 1110 grams were in the possession of Naeem. The men were arrested and the F.I.R. lodged.

3. The learned counsel for the applicants has argued that the charas has been foisted upon the two men who are otherwise innocent; that the testimony of police witnesses is worthless; that no private person was associated in the process of arrest and recovery; that applicant Noman suffers from a kidney ailment; that the Honorable Supreme Court in a number of cases has granted bail in serious crimes on medical grounds; that the Honorable Supreme Court has granted bail in a case where 287 kilograms of charas was recovered. The learned counsel has cited a number of cases on the principle that bail can be granted if there is doubt in the prosecution case. Counsel has also put on record an affidavit signed by 6 persons who have stated that Noman is innocent. To the contrary the learned APG has supported the impugned order and opposed the grant of bail.

4. I have heard the learned counsel for the applicants as well as the learned APG and with their able assistance gone through the available record.

5. There is no dispute regarding the fact that bail on medical grounds can be granted; however, in the present case apart from a blanket statement that applicant Noman suffers from a kidney disease, no cogent evidence has been shown to establish that the ailment with which the applicant suffers is of such a nature that its treatment is not available in jail and that the applicant's incarceration will be detrimental to his life. Similarly, the learned counsel, apart from putting some press clippings on record, has not demonstrated that the Honorable Supreme Court while granting bail enunciated a principle of law which all courts below it are obligated to comply with and follow and which is applicable in the present case. Grant of bail in one case does not necessarily mean that bail in all such cases must be granted. The circumstances of each case must be looked at separately. With much respect, I do not agree with the learned counsel that the testimony of police witnesses is worthless. This issue has also now been settled by the Honorable Supreme Court for a substantially long time. Further, section 25 of the Act of 1997 excludes the applicability of section 103 Cr.P.C. Prima facie there is no malafide on part of the police which has been demonstrated at this stage to show that the charas recovered was foisted upon the applicants. The affidavit signed by some residents of the area will have to be examined at trial to determine its authenticity and accuracy. It is true that in many cases courts have taken a lenient view when the quantity of narcotics was slightly above the one kilogram benchmark however after the decision of the Honorable Supreme Court in the case of Bilal vs The State (2021 SCMR 460) where such a ground was held to be presumptuous, it is not open for this court anymore to take a different view.

6. Upon a tentative assessment it appears that the two applicants were caught red-handed with charas in their possession, the net weight of which, recovered from each individual was above the one kilogram benchmark. The seizure was made on 30.11.2021 and was sent for chemical analysis the next day i.e. 01.12.2021. The chemical analyst opined that the seized substance was charas. Possession of such a substance in the quantity which was recovered carried a potential life sentence and thus falls within the non-prohibitory clause of section 497 Cr.P.C.

7. In view of the above, the learned counsel has failed to make out a case for grant of bail and thus the bail application is dismissed.

JUDGE