

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Bail Application No. 639 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGES
<u>For hearing of bail application.</u>	
<u>9th May, 2022</u>	
	Mr. Waseem Saif Khoso, Advocate for applicant. Ms. Robina Qadir, DPG.
	=====
	Omar Sial, J.: Bilal has sought post arrest bail in crime number 339 of 2021 registered under section 6 and 9(c) of the Control of Narcotic Substances Act, 1997 at the Kalri police station in Karachi. Earlier, his application seeking bail was dismissed on 03.03.2022 by the learned Sessions Judge, Karachi South.
	2. A police party led by A.S.I. Muhammad Shahbaz was on normal patrol duty on 06.11.2021 when it received information that a man in possession of heroin was walking on the street. The applicant was apprehended with 65 grams of heroin in his possession.
	3. I have heard the learned counsel for the applicant and the learned DPG.
	4. It appears that the applicant is a user of heroin and that in fact he is the actual victim of the menace of drugs. The elder brother of the applicant was present and looking at the poverty of the family as well as what he explained tends to further reinforce my belief that the applicant is a victim of the drug trade and prima facie does not appear to be a dealer. He has been taken to several hospitals for treatment but treatment has not been successful. The family plans to admit him in a drug rehabilitation center in Thatta. Not in every case should the purpose of sentencing be looked at as being a deterrent or retributory. In suitable cases the reformatory and rehabilitatory purpose of sentencing should also be considered. In my view being admitted to a drug rehabilitation centre would serve more of a purpose to reform the applicant than him being incarcerated in jail. Rather than focus solely on a user of drugs, the police should expand its ambit of investigation so that the supplier of these drugs are caught and incarcerated. Unfortunately, almost never does the investigation of the police extend to such drug lords.

5. The quantity of drugs seized from the applicant falls within the ambit of section 9(b) of the CNS Act, 1997. Historically courts have shown leniency while granting bail when the offence complained of falls within this section as the potential sentence falls within the non-prohibitory clause of section 497 Cr.P.C. I am not impressed with the argument of the learned DPG that an amendment to the CNS Act 1997 by the Sindh Government has now made the offence one falling under section 9(c). It is yet to be determined whether a provincial legislature has the legislative competence of amending a federal statute.

6. Above are the reasons for the short order dated 27.04.2022.

JUDGE