

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Bail Application No. 436 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGES
For hearing of bail application.	
<u>28-03-2022</u>	
	<p>Syed Aijaz Hussain, Advocate for applicant. Mr. Talib Ali Memon, APG a/w ASI Saleem Akhtar, CRO Branch.</p> <p style="text-align: center;">=====</p> <p><u>Omar Sial, J:</u> Ghulam Hussain has sought post arrest bail in crime number 102 of 2022 registered under sections 6 and 9(c) of Control of Narcotic Substances Act 1997 at the Steel Town police station. Earlier, his application seeking bail was dismissed on 22.02.2022 by the learned 1st Additional Sessions Judge, Malir, Karachi.</p> <p>2. A brief background to the case is that the aforementioned F.I.R. was registered on 11.02.2022 on the complaint of S.I. Mian Mohammad Hasnain. The complainant recorded that the police party led by him was on normal patrol duty when they noticed a man walking on the road who appeared suspicious to the police party. The suspicious man, who happened to be the applicant, was apprehended, questioned and searched. From his possession 1200 grams of charas was discovered. The applicant was thus arrested and the F.I.R. lodged.</p> <p>3. The learned counsel or the applicant argued that the applicant was absolutely innocent and that the charas allegedly found from him was foisted upon him by the police officials when the applicant did not accede to the police demand to give them money. Apart from the foregoing submission the learned counsel argued that the F.I.R. was lodged one year after the incident. He also argued that the quantity of charas found from the applicant was ostensibly 1200 grams and that there was a possibility that the net weight would be less than one kilogram and thus the case would fall within the ambit of section 9(b) of the Act of 1997, which carries a potential sentence of seven years. To the contrary the learned APG has supported the impugned order and opposed the grant of bail.</p> <p>4. I have heard the learned counsel for the applicant as well as the learned APG and with their able assistance have gone through the record.</p>

5. Prima facie there is no evidence of the malafide of the police in arresting and filing a case against the applicant. The learned counsel's argument that the F.I.R. was lodged one year after the incident upon a tentative assessment does not carry much weight as it is obvious that the same is a typographical error. The F.I.R. in fact was registered within a few hours of the arrest and recovery. It is true that in many cases the 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. Upon a tentative assessment, it appears that the applicant was apprehended red-handed in possession of charas whose net weight was more than one kilogram and thus falls within the ambit of section 9(c) of the Act of 1997. The recovered material was confirmed as being charas by the chemical analyst, possession of which carries a potential sentence of imprisonment for life and thus falls within the non-prohibitory clause of section 497 Cr.P.C.

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

JUDGE