

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Bail Application No. 1779 of 2022

DATE

ORDER WITH SIGNATURE OF JUDGES

1. For orders on MA No.10630/2022
2. For hearing of bail application.

16-02-2023

Mr. Anwerzaib, Advocate a/w applicant.
Ms. Robina Qadir, Addl.P.G.

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Omar Sial, J: Akhtar Ali has sought pre-arrest bail in crime number 209 of 2022 registered under sections 6 and 9(c) of the CNS Act, 1997 at the Maripur police station. Earlier, his application seeking bill was dismissed by the learned 8th Additional Sessions Judge, Karachi West on 03.09.2022.

2. A police party led by A.S.I. Mukhtiar Ali was on patrol duty on 27.08.2022 when it received information that some men with a substantial quantity of charas were coming towards the Truck Adda. The police party reached the identified place and saw 2 motorcyclists coming their way who were identified by the spy informer as being the men who were transporting the charas. The police managed to stop one of the motorcycles on which were 2 men while the 3 men on the other motorcycles threw some sacks on the ground and ran away. The 2 arrested persons were identified as Jumma Gul and Shah Gul. 10 kilograms of charas were recovered from Jumma Khan while 12 kilograms were recovered from Shah Gul. The 2 apprehended accused persons identified their fleeing companions as being the applicant Akhtar Ali and Akbar and Shafiq. The sacks thrown away by the 3 fleeing men were found to also contain charas aggregating 19 kilograms.

3. The learned counsel has argued that the applicant was arrested by the Docks police on 02.08.2022 however he was not shown as arrested. This prompted the brother of the applicant to file a habeus corpus petition

before the learned 19th Judicial Magistrate, Karachi West. A raid was conducted at the Docks police station and the applicant was indeed found in illegal custody. The applicant's family wanted to register a case against the police officials however the police declined to register one. As a consequence an application under section 22-A Cr.P.C. was moved before the learned 9th Additional Sessions Judge, Karachi West who directed the applicant to file a direct complaint instead of an F.I.R. The direct complaint was filed on 22.08.2022 which is pending adjudication. According to the learned counsel the filing of the direct complaint enraged the SHO of the Docks police station who started pressurizing the family to withdraw the complaint. Upon the family declining to do so, the applicant was involved in the present case. The learned Addl.P.G. while not disputing the history argued that the applicant was arrested by the Maripur police and not the Docks police, against whom the applicant and his family had a grievance. I have heard the counsels. My observations and findings are as follows.

4. Malafide on the part of the police cannot conclusively be ruled out at this stage. It appears that the police had illegally picked up the applicant a lot earlier than the occurrence of the incident and he was also recovered from such illegal confinement by a learned magistrate. I agree with the learned Addl.P.G. that it was the Maripur police that registered the present case and not the Docks police; however, it is not far-fetched nor unprecedented that the police of one station uses its influence in another police station to settle its scores. The truth will be unearthed at trial however at this preliminary stage, keeping in view the fact that no recovery was effected from the applicant coupled with the fact that the only evidence against him is a statement of a co-accused, I am inclined to give him the benefit of the doubt at the bail stage. Police malafide is further evidenced by the fact that it seems that the police has spread out the recovery of the ostensibly recovered charas from the 3 absconding persons. There was no way that the police could know as to which person carried which bag as the same had been thrown away by the fleeing suspects. The

police ear marking each bag to have been carried by a specific person does not appear to be logical.

5. It is for the above reasons that I am of the view that the applicant has made out a case for grant of pre-arrest bail. The pre-arrest bail granted to him earlier is therefore confirmed on the same terms and conditions.

JUDGE