

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Bail Application No.S-04 of 2023

Applicant: Taj Muhammad Son of Muhammad Juman through Mian Taj Muhammad Keerio, Advocate.

Respondent: The State through Ms. Rameshan, Assistant Prosecutor General, Sindh.

Date of hearing: **10.04.2023**

Date of Order: **10.04.2023**

O R D E R

AMJAD ALI SAHITO, J:- Through the instant criminal bail application, the applicant above named seeks his post-arrest bail in Crime No.179 of 2022, under section 9-C Control of Narcotic Substance Act, 1997, registered at P.S Tando Ghulam Ali. Earlier the bail plea of the applicant was declined by the learned 1st Additional Sessions Judge / MCTC Badin vide order dated 14.12.2022.

2. The details and particulars of the F.I.R. are already available in the bail application and crime report, same could be gathered from the copy of F.I.R. attached with such application, hence needs not to reproduce the same hereunder.

3. Per learned counsel the applicant / accused is innocent has falsely been implicated in this case; that there is violation of section 103 Cr.P.C as no private person has been engaged as a mashir of arrest and recovery; that I.O of the case has not conducted the investigation about the Government vehicle; that applicant / accused is in jail he is no more required for further investigation; that out of 10 K.Gs only 1 K.G was sent to the office of Chemical Examiner for its analysis, as such, its maximum punishment is three years and less than six months; that offence in which the applicant / accused is charged does not fall within the prohibitory clause of section 497 Cr.P.C. He lastly prayed for grant of bail.

4. On the other hand, learned Assistant Prosecutor General, Sindh submits that applicant / accused was arrested on the spot along-with 10 K.G and 200 grams and punishment provided by law is 14 years and not less than seven years. She also relied upon the case of Muhammad Noman Munir Vs. The State and another [2020 SCMR 1257].

5. I have heard learned counsel for the respective parties having also gone through the material available on record.

6. Admittedly, the applicant / accused was driver of the Government vehicle bearing registration No.EA-1955 and from backside of the carry van the police has recovered katta filled with *Bhang* which was weighed through electronic scale which became 10 K.Gs and 200 grams out of which one K.G was sealed in a cloth and sent to the office of chemical examiner and report received as positive. So far as the contention raised by the learned counsel for applicant / accused that all the witnesses are police officials, as such, there is violation of section 103 Cr.P.C suffice to say that section 25 of Control of Narcotic Substances Act, 1997 has excluded the applicability of section 103 Cr.P.C. Reliance is placed on the case of Muhammad Noman Munir Vs. The State and another [2020 SCMR 1257]. Further the punishment of present offence

provided by law is upto 14 years and not less than seven years. The huge quantity of narcotic was recovered from carry vehicle which was driven by applicant / accused. At bail stage only tentative assessment is to be made. Sufficient material is available on the record which connects the applicant / accused with the alleged offence, as such, the applicant has failed to make out a case for grant of bail in view of sub-section (2) of section 497 Cr.P.C; resultantly instant bail application is dismissed. However, the learned Trial Court is directed to proceed with the case on day to day basis and conclude the same preferably within three (03) months and submit such compliance report to this Court through its Additional Registrar.

7. Needless to mention here that the observations made hereinabove are tentative in nature would not influence the learned Trial Court while deciding the case of either party at trial.

JUDGE

*Muhammad Danish**