

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Application No. 92 of 2023

| <i>Date</i> | <i>Order with Signature of Judge</i> |
|-------------------------|--|
| Applicant: | Rizwan son of Haji Khan, through Mr. Ali Nasir Baloch, Advocate. |
| The State: | Through Mr. Khadim Hussain Khoonharo, Addl. Prosecutor General, Sindh. |
| Date of hearing: | 09.03.2023. |
| Date of order: | 09.03.2023. |

ORDER

Muhammad Saleem Jessar, J:- Through this bail application applicant Rizwan seeks his release on post arrest bail in Crime No.503/2022 of P.S Gulshan-e-Maymar, Karachi, under Section 6/9-C CNS Act, 1997. The case has been challaned which is now pending for trial before the Court of 8th Addl. Sessions Judge/MCTC, Karachi (West) vide Sessions Case No.3324/2022 (re-the State Versus Rizwan). The applicant filed bail application before the trial Court which by means of order dated 05.12.2022 was declined; hence, instant bail application has been maintained.

2. Since the facts of the prosecution case are already mentioned in the FIR, which is annexed with the Court file, therefore, there is no need to reproduce the same.

3. Pursuant to directions contained under previous order, learned counsel for the applicant submits certified copy of order dated 22.11.2022 passed by the trial Court, under the cover of his statement dated 09.03.2023, taken on record.

4. Learned counsel for the applicant submits that co-accused Abdul Tauheed from whose possession 1670 grams of charas was recovered, has been bailed out by the trial Court and allegation against present application is that he was found in possession of 420 grams of heroin powder; however, punishment provided by the law is 'may extend to 10 years or 7 years'. He further submits that net weight

of the contraband as per chemical report is 395 grams; hence, case against applicant requires further inquiry. He, therefore, prays for grant of bail.

5. Learned Addl. P.G, Sindh appearing for the State, submits that net weight of the contraband as per report is 395 grams and punishment provided by the law for alleged offence is 7 years or 10 years; however, he opposes the bail application.

6. **Heard arguments and perused record.** Admittedly, the applicant as well as co-accused Abdul Tauheed were arrested by the police along with alleged contraband on 13.09.2022; whereas, contraband was sent to laboratory on 12.10.2022 i.e. with delay of about 29 days for which no plausible explanation has been furnished by the prosecution even no material has been placed on record in whose possession contraband was kept in safe custody during intervening period. Per new amendment, two punishments are provided by the law for possessing 395 grams of heroin; hence, following dictum of law, as has been observed by the superior Courts, lesser quantum of sentence is to be considered at bail stage. The lesser quantum is seven years which does not exceed limits of prohibitory clause of section of section 497 Cr.P.C. The contraband shown to have been recovered from co-accused is 1670 grams which exceeds limits of prohibitory clause of section 497 Cr.P.C even then he has been bailed out by the trial Court. In the circumstances, propriety of law demands that application should also be extended constant treatment.

7. I am also fortified with the principle of law laid down by the Honourable Supreme Court of Pakistan in case of *ATEEB UR REHMAN @ ATTI MOCHI Versus The STATE and others* (2016 SCMR 1424) whereby learned Apex Court while discussing identical issue, has held in para-3 of the order, as under;_

“3. After hearing the learned counsel for the petitioner, learned Additional Prosecutor General Punjab and perusing the material available on record, we have noticed that when the petitioner was apprehended, 1014 grams of heroin was allegedly recovered from a shopper bag which he was carrying in his right hand. On Court query, the learned Additional Prosecutor General, after going through the recovery memo available on the file of police record, could not show that the recovered heroin was weighed along with the polythene bag or otherwise. If the recovered heroin was weighed along with the polythene bag, prima facie, the weight of the heroin without the polythene bag, if weighed, might have come to 1000 grams or less than that and in that eventuality, the case of the present petitioner would have fallen within the ambit of section 9(b) of the Control of Narcotic Substances Act, 1997. In this backdrop, the case of the petitioner becomes one of further enquiry falling within the purview of section 497(2) of the Code of Criminal Procedure.”

8. In view of above facts and circumstances of present case and taking guidelines from cited case, I am of the opinion that applicant/accused has succeeded to make out a good prima facie case of further inquiry within meaning of subsection 2 to section 497 Cr.P.C. Consequently, instant bail application is

hereby allowed. Applicant **Rizwan son of Haji Khan** shall be released on bail subject to furnishing his solvent surety in the sum of Rs.100,000/- (Rupees One Lac Only) and PR Bond in the like amount to the satisfaction of learned trial Court.

9. Needless to mention that the observation(s) made hereinabove is/are tentative in nature and shall not prejudice the case of either party during trial. However, the learned trial Court may proceed against the Applicant, if he is found misusing the concession of bail.

10. This Criminal Bail Application is disposed of in the terms indicated above.

JUDGE

Zulfiqar/P.A