

THE HIGH COURT OF SINDH KARACHI

Criminal Bail Application No. 570 of 2023

For hearing of Bail Application.

Applicant/ Accused : Sarfraz Ahmed son of Siraj through
Syed Lal Hussain Shah, Advocate.

Complainant/State : Through Ms. Abida Parveen Channar,
Special Prosecutor ANF.

Date of hearing : 12-04-2023

Date of order : 12-04-2023

*FIR No. 32/2021
U/s: 6/9(c), 14-15 CNSA, 1997
P.S. ANF Gulshan-e-Iqbal.*

ORDER

Adnan Iqbal Chaudhry J. - The Applicant/ Accused seeks post-arrest bail in the aforesaid crime on the ground of statutory delay after the same had been declined by the Special Judge CNS by order dated 11-02-2023.

2. A total of 14.4 kg chars was recovered from the car being driven by the applicant/accused with two passengers. However, the quantity of chars attributed to each accused person in the FIR is the one that was revealed by each accused person himself from the place where he was sitting. In this way, the chars recovered from the applicant/accused was 3.6 kilograms which attracted section 9(c) of the CNS Act, 1997. Since death is a possible punishment thereunder, the learned Special Judge CNS held that clause (b) to the third proviso to section 497(1) Cr.P.C. was not triggered i.e. a period of two years had not gone by since the Applicant's arrest and thus the ground of statutory delay was premature.

3. Learned counsel for the Applicant submits that for a quantity of 3.6 kilograms chars the punishment of death is ruled out by the proviso to the erstwhile section 9(c) of the CNS Act, and therefore in the instant case it is clause (a) of the third proviso to section 497(1)

Cr.P.C. that is applicable i.e. where a period of one year since arrest can be considered for the ground of statutory delay. However, when asked to assist the Court on questions recorded in the order dated 06-04-2023, learned counsel is not able to do so. Those questions are (a) whether in the given circumstances the entire quantity of 14.4 kg recovered from the vehicle could not be attributed to each person as joint possession ?; and (b) whether the case of State v. Mobin Khan (2000 SCMR 299) holds that the ground of statutory delay in the third proviso to section 497(1) Cr.P.C. cannot be invoked for offences under the CNS Act by reason of section 51(1) of the CNS Act ?

4. Be that as it may, even assuming that it is the period of one year in clause (a) of the third proviso to section 497(1) Cr.P.C. that is to be applied in computing the delay, learned counsel for the Applicant has not even filed the diary of the trial court to show that delay was solely on account of the prosecution. The learned APG Sindh informs that as the matter presently stands, charge has been framed and case is fixed in the coming few days for evidence of prosecution witnesses. Therefore, since learned counsel for the Applicant has not been able to substantiate that the delay of one year since the Applicant's arrest was solely on account of the prosecution, the bail application is dismissed.

SHABAN*

JUDGE