

**IN THE HIGH COURT OF SINDH
CIRCUIT COURT MIRPURKHAS**

Crl. Bail Application No.S-53 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objections.
2. For hearing of main case.

19.10.2023

Mr. Iqrar Ali Panhwar, Advocate for the applicant.
Mr. Shahzado Saleem, Additional Prosecutor General Sindh.

ORDER

Shamsuddin Abbasi, J.: Applicant Ahsan Ali seeks post arrest bail in F.I.R. No. 188/2023 of Police Station Sanghar for offence under section 9(1)(3)(C) Control of Narcotics Substances Act, after rejection of his bail plea by learned trial court vide order dated 11.09.2023.

Brief facts of the prosecution case are that on 01.08.2023, complainant S.I.P Abdul Hakeem Kumbhar was on patrolling along with his sub-ordinate staff, when he apprehended applicant and recovered 2250 gms of charas from his possession. He prepared mushirnama of arrest and recovery at the place of incident in presence of mushirs and brought the accused and recovered charas at P.S and lodged F.I.R. to the above effect.

Learned counsel for the applicant has contended that applicant is innocent and has been falsely implicated in this case by police at the behest of parents of his wife as they contracted freewill marriage without their consent and he also sought protection against parents of his wife; that according to the amendment 2022 in CNS Act 2022, punishment provided for quantum of substance allegedly recovered

from his possession which may extent to fourteen years but shall not be less than nine years, hence his case does not fall within the prohibitory clause of section 497 Cr.P.C.; that name of co accused Abdul Kareem has been dropped in the final challan but he admitted that he was joined in trial by learned trial court; that still charge has not been framed and applicant is behind that bar without progress in trial.

Learned Additional Prosecutor General has submitted that huge quantity of contraband substance has been recovered from possession of applicant in presence of mushirs which comes within the prohibitory clause of 497 Cr.P.C, that chemical examiner report is positive, therefore; applicant is not entitled for grant of bail and case is fixed for framing of charge.

Heard learned counsel for the applicant and learned Additional Prosecutor General and perused the material available on the record

From tentative assessment material available on the record, it appears that 2250 grams of charas was recovered from the possession of applicant by complainant in presence of mashirs at the place of incident. Alleged recovered charas was sealed at the spot and was sent to the chemical examiner for report which is positive which connects the applicant with the commission of offence. Case has been fixed for framing of charge by learned trial court on 23.10.2023. Contention raised by the learned counsel for the applicant that there is violation of section 103 Cr.P.C is not correct for the reason that CNSA is Special law and section 103 Cr.P.C is excluded for offences falling under the Narcotics Substance Act, by virtue of section 25 of the Act. As for the contention

raised by learned council that applicant has contracted free will marriage in the year 2018 and police has implicated him in this case at the behest of his in laws, in fact this is defense plea of applicant which cannot be considered at bail stage and it amounts to be deeper appreciation which is not permissible at this stage. Learned counsel for the applicant has also pointed out that one Karim Bux was shown as accused in the interim chalan but latter on his name was dropped in the final chalan. Case of applicant is on different footings with the case of Abdul Kareem neither his name transpired in the FIR nor his presence was shown at the place of incident, however, learned trial court has joined him in the trial. Sufficient material is available on the record which connects the applicant/accused with the commission of alleged offence, therefore, instant application being devoid of merits is dismissed. The above observation made here in above is tentative in nature and would not prejudice at the trial.

JUDGE

Bilal