

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Bail Appln. No. S – 377 of 2023.

(Abdul Rasheed Chandio v. The State)

Date	Order with signature of Judge
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For orders on office objections
For Hearing of Bail Application.

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Mr. Rukhsar Ahmed Junejo, Advocate for applicant.
Mr. Aftab Ahmed Shar, Additional PG for the State.

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Date of Hearing : **17.07.2023**
Date of order : **17.07.2023**

ORDER

AMJAD ALI BOHIO, J:- After the dismissal of Cr. Bail Application No. 1425 of 2023, vide an order dated 01.06.2023 from the Court of Additional Sessions Judge-I (MCTC), Special Judge for CNS, Khairpur, the applicant has filed the aforementioned bail application. This application is related to Crime No. 177 of 2023, which took place at P.S SMM, District Khairpur, and involves an offense under Section 9 (C) of the CNS Act, 1997.

2. The learned counsel representing the applicant put forth the primary argument that the weight of the recovered charas, amounting to 1500 grams, is relatively small. He contended that the charas had been planted due to enmity with the accused Arif Chandio, against whom, the applicant's sister, Mst. Fahmeeda, lodged FIR bearing Crime No. 265 of 2015 for an offense under Section 302 at P.S. A-Section, Khairpur. Additionally, she filed Cr. Misc. Application No. 4414 of 2018 under Section 22-A & B Cr.P.C, seeking the registration of an FIR against SHO P.S Shah Latif and other police officials. Furthermore, she filed an application against the police to higher authorities. Therefore, the applicant's involvement in the aforementioned offense indicates the malicious intent of the police in falsely implicating the applicant/accused. Finally, the counsel asserts that the applicant is entitled to the concession

of bail, citing an unreported order dated 16.01.2023 passed by this Court in Criminal Bail Application No. S-485 of 2022.

3. On the other hand, the learned Additional Public Prosecutor (PG) argued that the facts of the case, as mentioned in the order dated 16.01.2023 passed by this Court, are significantly different from the current case. As per order on bail application No. S-485 of 2022, only 200 grams of charas were dispatched for chemical examination, while in the present case, the entire contraband weighing 1500 grams was delivered to the chemical examiner in a sealed parcel. Additionally, the recent amendment to the law states that the punishment for possessing 1500 grams of charas is not less than nine years and not exceeding 14 years. The application filed by the sister of the applicant against the police officials and the registration of an FIR against the opposing party relates to incidents that occurred prior to the years 2015 and 2018. Moreover, the complainant and prosecution witnesses in the current case have no connection with the said police officials, rendering the defense's plea irrelevant. Furthermore, considering such grounds at the bail stage would require a more thorough examination.

4. According to the prosecution's account, the accused was found in possession of 1500 grams of charas. The complaint filed by the applicant's sister against the police official pertains to a period about five years ago in 2018 and has no relevance to the current prosecution witnesses. The entire contraband material was sealed at the scene and dispatched to the Chemical Examiner within 48 hours of the alleged recovery. In the case of Criminal Bail Application No. S-485 of 2022, only 200 grams of charas were examined by the Chemical Examiner, which makes the facts of that case irrelevant to the present situation where the full 1500 grams of charas were sent to and received by the Chemical Examiner in a properly sealed parcel. Furthermore, it is noted that the recovery memo explicitly mentions the sealed parcel, and the police had no prior knowledge of the case at hand, thus rendering Section 103 of the Cr.P.C. inapplicable. There is no evidence available to suggest any malicious intent on the part of the complainant and witnesses in falsely implicating the applicant/accused.

5. Under the Control of Narcotics Substance (Amendment) Act, 2022, the offense of possessing charas ranging from 1000 grams to 4999 grams carries a punishment of up to fourteen years' imprisonment, with a minimum sentence of nine years along with a fine ranging from Four Hundred Thousand Rupees to Eighty Thousand Rupees. The specific punishment for the recovery of 1500 grams of charas is provided in column No. 3 of the table under Section 9(1) of the Control of Narcotics Substance (Amendment Act), 2022. Due to the amendment and the enhanced punishment for the recovery of 1500 grams, which falls within a borderline case, the possibility of considering bail is no longer available unless the applicant can establish a case for further inquiry, which they have failed to do so.

6. Therefore, considering the lack of merit in the bail application, it is dismissed. It is important to note that any observations made in this order are tentative and shall not affect the merits of the case.

JUDGE

Faisal Mumtaz/PS