

ORDER SHEET
THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.851 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
------	----------------------------------

For hearing of bail application

17.7.2023

Mr. Nazir Ahmed, advocate for the applicant
Mr. Muntazir Mehdi, Additional PG alongwith SI Ejaz Ahmed, PS Malir City, Karachi

Through this bail application, the applicant seeks post-arrest bail in FIR No.263/2023 dated 22.3.2023 for offenses under Section 6(i) 9-C of the Control of Narcotics Substance Act, 1997 at PS Malir City, Karachi.

2. Briefly the facts of the prosecution case are that on 22.3.2023 at 10:15 p.m. at KDA Chowk inside the Street of Gareebabad Malir City Karachi, the present accused was arrested and found in possession of 775 grams of the heroine in presence of mashirs. Thereafter the complainant arrested the accused and prepared a memo of arrest in the presence of Mashirs and sealed the property and lodged the FIR of the incident.

3. In the bail application, the applicant/accused has submitted that the case against him is false and fabricated and he has been involved falsely and malafidely by the police against whom several complaints were made by the family of the applicant; that the applicant's remaining in jail with other criminals will spoil his future more particularly in drug case; that the alleged recovery has been foisted upon him by police; that chemical report dated 08.5.2023 is managed; that the trial Court has failed to consider that alleged quantity of 775 grams of the heroine is on the borderline of 9(c) CNS Act so it means that it can fall within the scope of section 9(b) CNS Act, 1997, which does not fall within the ambit of section 497, Cr. P.C while keeping the quantum of the sentence; that there is a violation of section 103 Cr.P.C. though the alleged place of recovery is a thickly populated area; that the applicant is neither previous convict nor criminal nor hardened; that the case has been challaned and the applicant is no more required for further investigation; that the applicant prayed for grant of bail. In support of his contentions, he relied upon the cases of Aya Khan and another vs. The State (2020 SCMR 350), Ateeb-ur-Rehman v. The State (2016 SCMR 1424), Janib Ali Zardari v. The State (2014 YLR 632), Ayaz Hussain

v. The State (2020 P.Cr.L.J. 737), Murad Khan v. The State (2020 SCMR 431), Noman v. The State (2020 P.Cr.L.J. Note 40), Abdul Ghaffar v. The State (2020 MLD 977), Rizwan v. The State (2020 MLD 59), Mst. Nawab Khatoon v. The State (SBLR 2020 Sindh 559), Rajab Ali Kerio v. The State (2017 P.Cr.L.J. Note 115), Sanaullah Khan v. The State (PLJ 2020 Cr.C Lahore 300), Amir Mehmood v. The State (2014 MLD 1323), Akhtar Jan v. The State (2009 PLR 128), Asghar Ali v. The State (2018 MLD 129) and Shamshad Khan v. The State (2001 YLR 912).

4. Conversely, Learned Additional Prosecutor General Sindh opposed the bail application on the ground that a good quantity of heroin has been effected from the possession of the applicant; that the offense with which the applicant is charged is against society; that because of the amendments made in Section 9 of the Act of 1997 through Sindh Amendment Act, the offense committed by the applicant falls within the ambit of section 9(c) of the Act of 1997. He next submitted that the applicant is involved in so many cases of similar nature as such he is not entitled to the concession of bail, therefore, he prayed for dismissal of the instant bail application.

5. It has been contended by the learned counsel that the consistent view of the superior Courts is that in cases where recovery of narcotic substance does not exceed the limit between 900 to 1500 grams, it has been held by the superior Courts that the case being of the borderline between clauses (b) and (c) of section 9 of Control of Narcotic Substances Act, 1997 and invariably in all cases accused have been admitted to bail. He prayed that similar treatment be given to the applicant.

6. I have heard the learned counsel for the parties and perused the material available on record with their assistance and case law cited at the bar including the chemical report of the recovered contraband dated 08.5.2023.

7. Under the Sindh Amendment Act, several significant amendments to the Act of 1997 have been made. Narcotic Drug has been substituted by a new clause(s) whereby “Narcotic Drug” has been redefined and divided into two categories viz. Category (i) and Category (ii); the heroin is mentioned in Category (ii). The punishments in relation thereto prescribed in clauses (a), (b), and (c) of Section 9 of the Act of 1997 have been changed and categorized according to categories (i) and (ii). An offense shall fall under Section 9(c) if the quantity of narcotic drug category (i) and (ii), psychotropic substance or controlled substance exceeds the limit specified in clause (b). An offense shall fall under clause (b) if the quantity of psychotropic

substance or controlled substance or narcotic drug category (i) exceeds one hundred grams but does not exceed one kilogram, or if the quantity of narcotic drug category (ii) is fifty grams or less.

8. In the present case, it is the case of the prosecution that allegedly 775 grams of the heroine were recovered from the possession of the applicant, the chemical report of the narcotic drug as defined in Section 2 of the CNS Act, 1997 is positive, thus, the offense with which the applicant is charged is falling within the ambit of clause (c) of Section 9 of the Act. The punishment for the offense falling under clause (c) of Section 9 of the Act is death or imprisonment for life or imprisonment for a term that may extend to fourteen years. Honourable Supreme Court in the case of *Socha Gul v. The State* (SCMR 2015 1077), has held that bail should be granted sparingly in narcotics cases keeping in mind Section 51 of the Control of Narcotic Substances Act, 1997, which provides a note of caution as well as the fact that the offense amounts to a crime against society. In the case reported as *Noor Khan v. The State* (2021 SCMR 1212), the Supreme Court declined the bail to an accused from whom 1320 grams of cannabis was recovered by the police officials.

9. About the non-association of private persons, Section 25 of the CNSA exempted their presence in narcotics cases even otherwise the evidence of police officials is as good as any other citizen. Regarding the above, the Supreme Court in the case of *Zafar v. The State* (2008 SCMR 1254) held that Section 20 to 22 of the CNS Act, 1997 and directory and their non-compliance would not be a ground for holding the trial/conviction bad in the eyes of law.

10. Regarding the claim of false implication, this issue cannot be attended to without going beyond the barriers of tentative assessment, an exercise prohibited by the law. For the reason that the offence with which the applicant is charged is an offence against society at large and carries a punishment of death or imprisonment for life. The applicant was caught red handed with good quantity of heroine.

11. It is settled that for deciding the bail application the court has to observe the tentative assessment and a deeper appreciation of evidence is not required and it will not be fair to go into discussion about the merits of the case at this juncture. The record shows that the applicant has been booked in as many as three criminal cases under the same offenses, which prima facie, establishes that the applicant is prone to repeating the offense, therefore, the prosecution has collected sufficient material to connect the applicant with the alleged crime.

12. The guilt or innocence of the applicant is yet to be established at trial and it is well-settled that at the bail stage, only tentative assessment is to be undertaken and no deeper examination is permissible, however, the material so collected and the record produced is sufficient to refuse the bail to the applicant at this stage. Thus, tentative assessment of material available on record, prima facie leads to a conclusion that there are no reasonable grounds exist to believe that it is a case of further inquiry based on the complaints made by the family of the applicant to the higher authorities against the police.

13. The case law relied upon by the learned counsel for the applicant is distinguishable from the facts of the instant case, hence is not applicable.

14. For the foregoing reasons, the bail application is dismissed. However, it is clarified that observations made in this order are tentative and same shall not prejudice the case of either party. The learned trial Court is directed to conclude the trial of the subject case expeditiously within one month and if not concluded at least the complainant must be examined positively.

JUDGE