

**ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI**

Cr. Bail Application No.1635 of 2023

Order with signature of Judge(s)

- For hearing of bail application

24.08.2023

Mr. Ghulam Muhammad Khan Jadoon, Advocate for the applicant
alongwith Ms. Kulsoom Khan Jadoon, Advocate
Ms. Amna Ansari, Additional Prosecutor General

Applicant Asif Khan @ Mota is seeking bail after arrest in Crime No.30 of 2023 registered with P.S SIU, Karachi under Section 9(i)3(c) of Sindh (Amendment) Narcotics Act, 2002. His bail application was dismissed by the learned Additional Sessions Judge-I, Karachi-West vide order dated 19.04.2023, hence the instant bail application.

Precisely, allegation against the applicant/alleged accused is that he was arrested with 1,600 grams of charas in his possession on 18.02.2023.

Learned counsel for the applicant has argued that the applicant is innocent and has been falsely implicated in this case and that there is delay in sending the alleged contraband to the chemical examiner and it is settled principle that procedural requirements are to be fulfilled by the Investigating Agency and failure thereof would create a doubt, which goes in favour of the applicant/accused at bail stage, therefore, applicant/alleged accused be enlarged on bail. He further contended that the investigation has been completed and challan has already been submitted, hence there is no apprehension of tempering evidence by the present applicant and that the applicant is first offender. He lastly argued that registration of the FIR and arrest of applicant on 18.02.2023 is infested with *malafide* and to the extent of delays states that even till date charge has not been framed.

On the other hand learned Additional Prosecutor General, Sindh heavily contested the bail application and submitted that there was no delay in dispatching the sample of contraband to the chemical examiner, which *in fact* were sent within seventy two hours, as required under Rule 4(2) of Control of Narcotic Substances (Government Analysts) Rules,

2001. She further contended that the applicant/accused was arrested on the spot and recovery of 1,600 gram charas was effected from his possession, hence, he is not entitled for the bail. While concluding her submissions, she prayed for rejection of bail plea of the applicant/accused.

After hearing the learned counsel for the applicant as well as learned Additional Prosecutor General, Sindh and perusal of available record, it has been observed that it is not on the record that where does the SIU Police Station situated and under what law such a police station was created. Also when one looks at the interrogation report, where allegedly it has been “admitted” by the applicant that he was in the “business of supplying charas” and kept more than 15 such packets in his house, the report is silent as to any visit to his house to recover such a huge quantity lying there. Allegedly, it was admitted by the applicant that he was making regular payments to the charas provider namely Tayab Mama through Easy Paisa, but no evidence has been collected in this regard, even name of Arif Mama does not appear in column 2 of the challan, creating serious doubts in the prosecution story.

In these circumstances, *prima facie* investigation appears to be faulty one and creates serious doubt. It is settled principle of law that bail is not a license of acquittal or exoneration but simply a change of custody and in case of bail the place of custody is only substituted and the court after satisfying itself, changes the custody from police and gives it to the hands of sureties. The exceptions that justify refusal of bail are also well settled by several judgments of the Supreme Court of Pakistan.¹ They are the likelihood of the accused, if released on bail: (i) to abscond to escape trial; (ii) to tamper with the prosecution evidence or influence the prosecution witnesses to obstruct the course of justice; and (iii) to repeat the offence. The applicant is behind the bars since 18.02.2023 and nothing is to be recovered from him anymore. Accordingly, post arrest bail is granted to the applicant Asif Khan @ Mota son of Aziz ur Rehman in Crime No.30/2023 on the same terms, as stipulated in order dated 04.07.2023 passed in Cr. Bail Application No.1267 of 2023.

Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while

¹ Tariq Bashir v. State PLD 1995 SC 34; Zafar Iqbal v. Muhammad Anwar 2009 SCMR 1488; Muhammad Tanveer v. State PLD 2017 SC 733 and Iftikhar Ahmed v. State PLD 2021 SC 799.

deciding the case of the applicant on merits. However, in case the applicant misuses the concession of bail in any manner, the trial Court shall be at liberty to cancel the same after giving him notice, in accordance with law.

Instant bail application is disposed of accordingly.

JUDGE

B-K Soomro