

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1291 of 2023

Date	Order with signature of Judge
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For hearing of bail application

24.8.2023

Mr. Munir Ahmed Gilal advocate for the applicant
Mr. Muhammad Iqbal Awan, Additional PG

Through this bail application under Section 497 Cr.P.C., the applicant Muhammad Azam has sought admission to post-arrest bail in F.I.R No.355/2023, registered under Section 3-C CNS (Amendment) Act 2022(i)9 at Police Station Site Super Highway Industrial Area Karachi. The earlier bail plea of the applicant has been declined by the learned Additional Session Judge IV (CNS) Malir Karachi vide order dated 06.06.2023 in Criminal Bail Application No.1792/2023.

2. The accusation against the applicant is that he was found in possession of charas weighing 1100 grams, as per the digital scale. Police arrested him and brought him to the police station along with narcotics and sent it for chemical examination, and subsequently obtained the chemical report of Narcotics as positive vide letter dated 22.4.2023.

3. It is inter-alia contended that the applicant is innocent and has falsely been implicated in this case and alleged narcotics are foisted upon the applicant/accused. He next contended that the quantity of 100 grams marginally exceeds the upper limit of 1000 grams, therefore, being a borderline case between clause 'B' and 'C' of section 9 and also because in the given circumstances whether the maximum punishment of 14 years provided in the alternative would be awarded or not is also a point of discussion and further inquiry. Per learned counsel, the alleged recovery of 1100 grams of charas constituted a borderline case in terms of ratio of the judgment rendered in the case of *Taj Ali Khan v. State* (2004 YLR 439). He further submitted that the chemical examiner's report was still pending and it could not be decisively concluded at this stage that the recovered substance was narcotics. It is not established that the applicant is a previous convict or involved in the same and similar offense in the past. He next argued that the pointation of the accused by the informer is not mentioned in the contents of the FIR, which requires further inquiry. He has further contended that the description of charas

was not mentioned in the contents of the FIR. There is no independent witness has been cited by the complainant as the place of incident is a populated area. He next contended that the investigation has been completed and he is no longer required for further investigation. He lastly prayed for allowing the bail application.

4. Learned APG has opposed the application on the premise that the applicant is involved in the narcotic case as such he is not entitled to the concession of post-arrest bail. The learned APG submitted that it is a good quantity of charas, which because of the recent amendment in the law, through Act No.XX of 2022 in the Control of Narcotics Substance Act 1997, a punishment of 14 years is mentioned which falls within the prohibitory clause of Section 497 Cr. PC. The learned APG pointed out that the chemical report is positive, which connects the applicant to the subject crime, thus no case of further inquiry is made out in favor of the applicant. He next contended that the offense is against society as such the applicant deserves no leniency and his bail application may be dismissed.

5. I have heard learned counsel for the parties and perused the material available on record.

6. It is settled law that at the bail stage deeper appreciation cannot be gone into, but only tentative assessment is to be made just to find out whether the present applicant is connected with the commission of the offense or not. The offense with which the applicant is charged is an offense against society at large; the applicant was caught red-handed with the charas; and there is no allegation of any enmity between the applicant and the police officials who arrested him. Since a direct role has been assigned to the applicant and the offense carries a punishment of 14 years because of the recent amendment in the law, through Act No.XX of 2022 in the Control of Narcotics Substance Act 1997.

7. Prima facie, sufficient material has been brought by the prosecution on the record including the report of the Chemical Examiner which was sent to the lab soon after the registration of F.I.R and the report is positive, which is enough material to discard the point of view so put forward by the learned counsel for the applicant. In the case of Socha Gul vs. The State (2015 SCMR 1077), the Supreme Court 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. The CNS Act, 1997 consolidates and amends the law relating to narcotic drugs and psychotropic substances. It controls and prohibits the prosecution, processing, and trafficking of these substances. It also lays

progressive punishments for narcotic offenses. It provides for the constitution of Special Courts having exclusive jurisdiction to try narcotic offenses. The larger interest of the public demands that in case of recovery of narcotics the discretion under Section 497 of the Code of Criminal Procedure should not be exercised liberally. On the aforesaid proposition, I am guided by the decision of the Supreme Court in the case of *The State v. Javed Khan* (2010 SCMR 1989).

8. The learned counsel for the applicant through his exhaustive and elaborate arguments wanted this Court to give its categorical and specific verdict regarding an accused having no role in the case in hand in terms of the law laid down in the case referred above. But this Court is very much clear in its mind that no such precise verdict in bail matters can be given as every criminal case has its facts and circumstances. In principle in judicial discretion, whatever may be the nature of the matter about which it is required to be exercised, has to be used with due care and caution. Awareness of the context in which discretion is required to be exercised and of the reasonably foreseeable consequences of its use is the hallmark of a prudent exercise of judicial discretion. One ought not to make it a question of exercise of authority to grant bail in every narcotic case on the ground of 'further inquiry' and 'conscious knowledge' in disregard to the settled principles of law for grant or refusal of bail. The case law, referred to by the learned counsel, does not apply to the instant case, as the same has been delivered in another context of the matter which has no bearing in the present case.

9. Regarding the non-association of private persons, section 25 of the CNS Act exempted their presence in narcotics cases even otherwise the evidence of police officials is as good as any other citizen. In the case of *Noor Khan vs. The State* (2021 SCMR 1212), the Supreme Court declined bail to an accused from whom 1320 grams of cannabis were recovered by police officials. Regarding non-compliance with section 21 of the CNS Act, the Supreme Court in the case of *Zafar vs. The State* (2008 SCMR 1254), held that sections 20 to 22 of the CNS Act are directory and their non-compliance would not be a ground for holding the trial/conviction bad in the eyes of law. Regarding the claim of false implication, this issue cannot be attended to without going beyond the barriers of tentative assessment, an exercise prohibited by law.

10. As far as the defense plea and burden of proof are concerned, under provisions of section 29 of the Control of Narcotic Substances Act, 1997 presumption would be that a person who was found in possession of narcotics had committed the offence, unless otherwise proved and the

innocence and guilt of the applicant is yet to be determined by the trial Court.

11. In the above circumstances, I do not find the applicant entitled to bail at this stage of the case. For what has been discussed above, this Court is not inclined to accept the prayer of the applicant for a grant of bail on the ground that the case against the applicant is on the borderline; and the bail application is accordingly dismissed. As the trial is required to be commenced forthwith, therefore, the learned trial Court is directed to conclude the trial within one month positively, at least the complainant must be examined; and strong reasons shall be forwarded if the trial is not concluded within time.

12. The observations made hereinabove are tentative and the trial Court shall not be influenced by the same while deciding the case on merits.

Shahzad
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JUDGE