

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No. 1529 of 2023

Date

Order with signature of Judge

For hearing of bail application

15.8.2023

Mr. Muhammad Yousif Narejo advocate for the applicant.
Mr. Zahoor Shah, APG along with Inspector /I.O Farooq Ahmed of P.S. Mehmoodabad.

Through this bail application under Section 497 Cr.P.C., the applicant has sought admission to post-arrest bail in F.I.R No.195/2023, registered under Section 9(i) 3-C CNSA at Police Station Mehmoodabad Karachi. The earlier bail plea of the applicant has been declined by the learned District and Session Judge Karachi (South) vide order dated 05.06.2023 in Criminal Bail Application No.1849/2023.

2. The accusation against the applicant is that on 28.05.2023 at 0900 hours at Railway Line near Manora Masjid, Masoom Shah Colony, Mahmoodabad Karachi, he was found in possession of charas weighing about 2190 grams. The prosecution obtained a chemical report from the chemical examiner on 27.06.2023, which is positive.

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 place of the incident is a thickly populated area but no independent private person is cited as mashir, which is a clear violation of Section 103 Cr. P.C. makes the case highly doubtful. Learned counsel further submits that previously the applicant was threatened so many times on the applicant already sent a complaint/application to the Hon'ble Chief Justice of High Court and District & Sessions Judge Karachi South; that no specific role has been assigned to the applicant nor any recovery has been made from him during the investigation. He further contends that the complainant submitted an online complaint (CRMS) to the I.G. Sindh who also filed HCP No.1391/2023 before the Additional Sessions Judge-VII, Karachi. He further contends that the applicant was arrested from JPMC at about 0155 hours on 28.05.2023, which is captured in the CCTV of JPMC. He next submitted that the complainant and investigating officer has given two versions of the same incident about the recovery of alleged chars from the applicant one in F.I.R and the second in char sheet, which is not supported by the statements of independent witnesses and in such circumstances it is

yet to be determined which one of the two versions is true. In support of his contentions, he relied upon the cases of Muhammad Sarfraz Ansari vs. The State (PLD 2021 SC 738), Hayatullah vs Lal Badshah, and another (PLD 2009 Peshawar 28), Jamal-ud-Din alias Zubair Khan vs The State (2012 SCMR 573), Ihtisham Ali Cheema vs. The State (2022 SCMR 624), Tariq Bashir and 5 others vs. The State (PLD 1995 SC 34).

4. Learned APG has opposed the application on the premise that the applicant is involved in narcotic cases as such he is not entitled to the concession of post-arrest bail. The learned APG submitted that it is a huge 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 CrPC. He emphasized that the mere existence of a two versions is not a valid ground for holding the case one of further inquiry to grant bail under Section 497(2) CrPC. He prayed for the dismissal of the bail application.

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

6. Tentative assessment of the record reflects that on 28.05.2023 the applicant was found in possession of charas weighing about 2190 grams. The prosecution obtained a chemical report of the narcotic substances on 27.06.2023 which is positive. The plea was taken by the applicant that he made the complaint against the police personnel to the Hon'ble Chief Justice of this Court and Sessions Judge Karachi South prior in time. He has also taken the plea that in the FIR the applicant has been shown to hold one shopper in his right hand containing the charas whereas in the challan the police alleged to have recovered the charas from the pocket of the shirt of the applicant, which contradicts the statement made by the SIP in the FIR. Prima-facie the complainant/Investigating officer has given two versions of the recovery of alleged narcotics, which makes the case of the applicant that of further inquiry. On the aforesaid proposition, I seek guidance from the decision of the Supreme Court in the case of Ehsan Ullah vs. The State (2012 SCMR 1137). In this regard, guidance can also be sought from the pronouncement of the Supreme Court of Pakistan in the case of Zaigham Ashraf versus State, etc. (PLJ 2016 SC 14), wherein the Supreme Court has been pleased to observe as under:-

“Keeping in view the two conflicting versions; one given by the complainant in the FIR and the other by the Investigating Agency based on documentary evidence with regard to the plea of alibi, the case of the present petitioner has become certainly one of further inquiry, falling within the ambit of sub-section (2) of Section 497,

Cr.P.C., where the grant of bail becomes the right of accused and it is not a grace or concession, to be given by the Court. In the absence of any exceptional ground or reason, denial of bail in such a case would amount to exercise a discretion in a manner, not warranted by law and principle of justice.”

7. Prima-facie the benefit of the doubt if any should go in favor of the accused even at the bail stage in terms of the ratio of the judgments passed by the Supreme Court in the case of *Ihtisham Ali Cheema vs. The State* (2022 SCMR 624). As a general principle of criminal justice, if any dent is appearing in the case of the prosecution, the same is always to be resolved in favor of the accused, and the burden of proving the allegation leveled against the applicant is solely on the shoulders of the prosecution.

8. Keeping in view the factum whether the alleged Narcotics were recovered from the possession of the applicant as portrayed by the police in the FIR and/or charge sheet as both contradict each other on the question of recovery which needs to be looked into by the trial Court. It is well-settled that the benefit of the doubt in this aspect shall go to the accused. In view of the principle of law laid down by the Supreme Court in the case of *Manzoor and others v. The State* (PLD 1972 SC 81). Furthermore, the heinousness of the offense is per se no ground for rejection of bail.

9. The applicant is behind bars since his arrest. No private or independent person was associated with mashir in this case and all the witnesses of the prosecution are admittedly police officials, and as such the prosecution will be responsible to procure their attendance at the trial. Thus, there is no question or probability that the evidence will be tampered with or that the prosecution witnesses will be influenced by the applicant if he is enlarged on bail.

10. The guilt or innocence of the applicant is yet to be established as it would depend on the strength and quality of the evidence that will be produced by the prosecution and the defense before the trial Court, and in the intervening period no useful purpose would be served by keeping the applicant behind the bar for an indefinite period. Furthermore, ex-facie the bar contained in section 51(1) for post-arrest bail keeping in view the case brought by the prosecution seems not to be attractive or nor does it place any hindrance to granting post-arrest bail at the bail stage. The Supreme Court in the case of *Muhammad Sarfraz Ansari V/S state and others* PLD 2021 SC 738 held that at the bail stage, the court cannot make a deeper examination and appreciation of the evidence collected during

investigation or conduct anything like a preliminary trial to determine the accused's guilt or innocence.

11. For what has been discussed above this bail application is accepted and the applicant is granted bail in the aforesaid crime on furnishing solvent surety in the sum of Rs.200,000/- (Rupees two hundred thousand only) and P.R bonds in the like amount to the satisfaction of the trial Court.

12. It is clarified that observations made in the foregoing paragraphs are tentative and will not influence the trial in any manner whatsoever while deciding the case within two months positively with a compliance report to this court. However, if the applicant/accused attempts to misuse the concession of bail, then the learned trial Court shall pass necessary orders.

JUDGE

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Zahid