

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No.1442 of 2023

Date	Order with signature of Judge
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For hearing of bail application

08.8.2023

Mr. Shamsul Hadi advocate for the applicant
Mr. Muhammad Iqbal Awan, Additional PG

This bail application under Section 497 Cr.P.C. has been filed by the applicant / accused seeking admission to post-arrest bail in No.256/2023 registered under Sections 6/9-3(C) of the of The Control of Narcotic Substances Act, 1997 ('the Act of 1997'). (CNS Act, 1997) at PS Quaidabad Karachi. The applicant / accused had filed Criminal Bail Application which was dismissed by the learned IV-Additional Sessions Judge/Special Judge (CNS) Malir Karachi vide order dated 01.6.2023.

2. The case of the prosecution, as set up in the subject FIR, is that during the patrolling of the area by the police party on the date and at the time and place mentioned in the FIR, plastic shopping bag containing one packet of charas (cannabis) were recovered by the police from the applicant, which were found to be 1090, according to the digital weighing scale ; the recovered charas was sealed on the spot ; and, the incident took place in the presence of the patrolling police party as no other person was willing to act as mashir / witness.

3. Learned counsel for the applicant has mainly contended that the applicants/accused is innocent and has falsely been implicated in this case by the complainant with mala fide intention and ulterior motives. The learned counsel contended that no any independent witness has been cited by the complainant though the information was took place from the informer; that the recovery shown in the FIR falls within the borderline; that the place of incident is a thickly populated area, but the complainant has not produced any independent witness. Learned counsel further contended that nothing has been recovered from the possession of the applicant/accused; that the applicant was not arrested form the alleged place of incident, but he was arrested from his house; that there is no any reasonable ground in existence to believe that the present applicant has committed the alleged offence. He, therefore, prayed for allowing of instant bail application. In support of his contentions, counsel has placed reliance upon the cases of Aya Khan v. The State (2020 SCMR 350),

Asghar Ali v. The State (2022 P. Cr.L.J. Note 86), Asif Ali v. The State (2013 YLR 1241), Wajid alias Waji v. The State (2016 P. Cr.L.J. 831) and Sohrab v. The State (2013 YLR 786).

4. On the other hand, learned APG contends that the FIR clearly shows that charas was recovered from the applicant which was immediately seized and sealed on the spot ; the role of the applicant in relation to the commission of the subject offence is clear and specific in the FIR ; there was no delay either in lodging the FIR or in sending the narcotic substance recovered from the applicant for chemical examination ; the test reports submitted by the Chemical Examiner support the case of the prosecution. The allegation of malafide and ulterior motive on the part of the police officials has been specifically denied by learned APG. It is further contended by her that in view of the amendments made in Section 9 of the Act of 1997 through The Control of Narcotics Substance (Sindh Amendment) Act, 2021, ('Sindh Amendment Act of 2021') the offence committed by the applicant falls within the ambit of clause (c) of Section 9 of the Act of 1997, and accordingly it falls within the prohibitory clause of Section 497 Cr.P.C. He further contends that the witnesses have fully supported the prosecution version in their statements under Section 161 Cr.P.C., hence he prayed for the dismissal of the bail application.

5. I have heard learned counsel for the applicant and learned APG and have carefully examined the material available on record including the test reports submitted by the Chemical Examiner after examining the charas allegedly recovered from the applicant. According to the said test reports, the gross weight and net weight of charas was 1090 grams and. The charas (cannabis) allegedly recovered from the applicant fall within category (i) and category (ii), respectively, specified in Clause (s) of Section 2 of the Act of 1997 substituted through The Control of Narcotics Substance (Sindh Amendment) Act, 2021. The net weight of charas is more than the maximum limit of one kilogram (1,000 grams) prescribed in Clause (b) of Section 9 *ibid*, however, it can be termed as a borderline case, as discussed *supra*, but the alleged narcotics substance has been verified to be contraband by the expert opinion, however, the trial Court is in a better position to look all the aspects of the case after recording evidence.

6. The punishment of the offence falling under clause (c) of Section 9 *ibid* is death or imprisonment for life or imprisonment for a term which may extend to fourteen years. Thus, the prohibition contained in Section 51 of the Act of 1997 shall apply to this case, and it also falls within the prohibitory clause of Section 497 Cr.P.C. Therefore, in such

circumstances and at this stage the applicant is not entitled to the concession of bail and there appears to be no exception to the aforesaid rule in the facts and circumstances of the instant case.

7. The above view is fortified by Muhammad Noman Munir V/S The State and another, 2020 SCMR 1257, and Bilal Khan V/S The State, 2021 SCMR 460. In the former case, 1,380 grams of cannabis and 07 grams of heroin were recovered from the accused, and in the latter case the quantity of the recovered ice was 1,200 grams. In both the said authorities, the concession of bail was declined by the Supreme Court by holding that the prohibition embodied in Section 51 of the Act of 1997 was applicable thereto. It was also held in Muhammad Noman Munir (supra) that the non-association of a witness from the public and his non-cooperation was a usual conduct symptomatic of social apathy towards civic responsibility ; and, even otherwise the members of the contingent being functionaries of the State are second to none in their status, and their acts statutorily presumed, prima facie, were intra vires. The case law cited by learned counsel for the applicant/accused is not helpful to the applicant's case in view of the ratio of the latest judgment of the Supreme Court as well as the opinion formed by the expert i.e. chemical examiner.

8. The record shows that the charge sheet has been submitted in this case before the trial Court. The guilt or innocence of the applicant is yet to be established as it would depend on the strength and quality of the evidence produced/to be produced by the prosecution and the defense before the trial Court. Therefore, it is clarified that the observations made herein are tentative in nature which shall not prejudice the case of either party nor shall influence the learned trial Court in any manner in deciding the case strictly on merits in accordance with law.

9. In view of the above, the instant bail application is dismissed with direction to the learned trial Court to conclude the trial of the subject case within two (02) months strictly in accordance with law. Let this order be communicated forthwith to the learned trial Court for compliance.

10. This criminal bail application stands disposed of.

JUDGE