

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No.1455 of 2023

Date	Order with signature of Judge
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For hearing of bail application

07.8.2023

Mr. Shah Imroze Khan advocate alongwith Mr. M.S. Anjum advocate for the applicant/accused
Mr. Muntazir Mehdi, Additional PG

Through this criminal bail application, the applicant Mst Mumlikat seeks post-arrest bail in F.I.R No.151/2023 registered under Sections 9(1) 6 (b) of the CNS Act 1997 at PS Jackson Karachi after declining her bail plea by learned VIII-Additional Sessions Judge Karachi West/MCTC vide order dated 21.6.2023, she has approached this Court inter-alia on the ground that alleged small quantity of narcotics has been foisted upon her by police.

2. Brief facts of the prosecution case are that on 08.6.2023, the complainant SIP Nawaz Ali arrested the accused Mst Mumlikat, and recovered heroin weighing 210 grams from her possession. Such a chemical report has been obtained by the prosecution on 06.7.2023, which is positive.

3. Learned counsel for the applicant has mainly contended that the applicant/accused is innocent and has falsely been implicated in this case by the complainant; that all the witnesses are police officials and there is no apprehension of tempering the evidence by the applicant/accused; that the description of heroin powder has not mentioned in the memo of arrest and recovery. Learned counsel emphasized that the alleged offense against the applicant does not fall within the prohibitory clause of section 497(1) of the Code of Criminal Procedure, 1898 ("Cr.P.C.") but being a woman, the applicant's case is covered by the first proviso to section 497(1), Cr.P.C. he added that in cases of women accused, etc. as mentioned in the first proviso to section 497(1), irrespective of the category of the offense, the bail is to be granted as a rule and refused only as an exception in the same manner as it is granted or refused in offenses that do not fall within the prohibitory clause of section 497(1), Cr.P.C. he asserted that the exceptions that justify the refusal of bail are also well settled by several judgments of the Supreme Court. He prayed for allowing the bail application.

4. Learned Additional PG has strongly opposed the grant of bail to the applicant/accused on the ground that the applicant/accused was apprehended on the spot and the recovery of heroin was effected from her possession, besides so many other cases of similar nature are registered against her. Learned APG further argued that there is the likelihood of such an offense being repeated by the applicant as such the case of the applicant comes within the scope of the exception of the likelihood of repeating the offense. He emphasized that the persons involved in the commission of offenses of robbery or dacoity are usually professional criminals and there is a likelihood that they would repeat the offense if enlarged on bail.

5. I have heard learned counsel for the applicant and the learned Additional PG and have perused the record of the case with their assistance and case law cited at the bar.

6. Primarily, to decide the prayer for the grant of bail in the exercise of the discretionary power of the court under section 497(1), Cr.P.C., the availability of sufficient incriminating material to connect the accused with the commission of the offense alleged against her is not a relevant consideration. The Supreme Court in the case of Abbas Raza v. The State through P.G. Punjab and others (2020 SCMR 1859), the accused found in possession of 1300 grams of contraband was allowed bail. It has also been held that "the liberty of a person is a precious right which has been guaranteed under the Constitution of Islamic Republic of Pakistan, 1973. The denial of the same should be such which can establish the guilt of the accused without a second thought".

7. According to FIR, the complainant along with his police party arrested the applicant and recovered 210 grams of heroin from her possession. The question is whether this court can consider the quantity of substance sent for FSL for considering the case of the applicant for bail, in such a scenario, I seek guidance from the decision of the Supreme Court in the case of Para Din and others Vs the State (2016 SCMR 806). The Supreme Court has already set at naught the aforesaid point, and need no further deliberation on my part.

8. In narcotic cases the Supreme Court's earlier view in the case of Ameer Zeb v. The State (PLD 2012 SC 380), is clear that if any narcotic substance is allegedly recovered, a separate sample is to be taken from every separate packet, wrapper, or container, and every separate cake, slab

or another form for chemical analysis and if that is not done, then only that quantity of the narcotic substance is to be considered against the accused person from which a sample was taken and tested with a positive result.

9. Keeping in view the aforesaid principle in bail matters, in the present case it appears that the Chemical Examiner received 210 grams of narcotic substance thus it would be sufficient to say that in light of the judgment (supra). However, since the recovery of 210 grams of narcotic substance, the weight of which seems to be covered by Section 9(b), C.N.S. Act, 1997, which does not fall within the ambit of prohibitory clause of Section 497(1), Cr.P.C., besides amendment brought in the CNS Act, 1997 vide Act No. XX of 2022, punishment for contravention of Sections 6, 7, and 8 provides that if the quantity of psychotropic substances is more than 100 grams and up to 500 grams, the imprisonment may extend to five years, therefore, the applicant who is in jail since his arrest is entitled to the concession of bail keeping in view the quantum of punishment as well as dicta laid down by the Supreme Court as discussed supra. On the subject issue, the decisions of the Supreme Court and High Courts are clear in terms, thus no further deliberation is required on my part.

10. As the quantity of the alleged recovered 210 grams of narcotic substance marginally does not exceed the limit where the punishment is life imprisonment or death as set by the newly amended law. Under such circumstances whether the maximum punishment would be awarded or not, the same would be determined at the trial Court. Even it is by now well-settled that where two quantum of sentences is provided in the statute, for bail, the lesser shall be considered, without dilating upon the other points involved in the matter or agitated by the parties for and against, therefore, in the instant case, the question of quantum of sentence is required to be considered for bail; and the same would fall within the purview of further inquiry as provided under Section 497(2) Cr.P.C. on the aforesaid proposition I am guided by the decisions of the Supreme Court in the cases of Mst. Ghazala v. The State (2023 SCMR 887), and Raja Muhammad Younus v. The State (2013 SCMR 669).

11. As far as the contention of learned APG that the applicant is involved in other criminal cases is concerned, it would suffice that mere involvement in other cases would not disentitle her/him from the relief of bail if she/he otherwise succeeds in bringing his/her case within the meaning of further inquiry. Needful to add that liberty of a person is a precious right that has been guaranteed by the Constitution

of the Islamic Republic of Pakistan, 1973. Hence in cases, where there is a slight tilt towards the grant of bail, the same needs to be preferred over letting one to confine in jail for an indefinite period in the name of trial when the conclusion thereof can competently impose due punishment for such released person. Further, the learned APG has not brought on record any material that the applicant / accused has been convicted in any other case, hence, mere involvement in criminal cases cannot be ground to withhold the concession of bail in the given circumstance. Reliance is placed upon the cases of Moundar and others v. The State (PLD 1990 SC 934), Babar Hussain v. State (2020 SCMR 871), and Muhammad Rafique v. State (1997 SCMR 412).

12. It has been held by the Supreme Court of Pakistan in a case titled Aya Khan and another v. The State (2020 SCMR 350), that "Without discussing the merits of the case lest it prejudices the case of one or the other side, suffice it to say that in the FIR or the recovery memo, nowhere it is stated that whether it was the net or gross weight of the narcotics and in this eventuality it becomes a borderline case between subsections (b) and (c) of section 9, C.N.S.A., 1997. Thus the benefit of the doubt in this aspect shall go to the accused. Because of the principle of law laid down in the case of Manzoor and others v. The State (PLD 1972 SC 81)" accused having possession of 1100 grams of charas was granted bail.

13. No doubt, the offense of trafficking the narcotic is a heinous one and affects society at large but it is a settled principle of law that every case is to be decided on its facts and circumstances. Regarding the quantum of sentence in narcotic cases as has been held in the case of Ghulam Murtaza and another v. The State (PLD 2009 Lahore 362) and punishment is provided for narcotics exceeding one kilogram and up to two kilograms imprisonment of Rigorous Imprisonment for 04 years and 06 months and fine of Rs.20,000/- or in default Simple Imprisonment for 05 months, which does not fall within the prohibitory clause of section 497(2) Cr.P.C. In the case of Shazia v. The State (2018 PCr.LJ 990) the Lahore High Court has granted bail to a female accused in case of recovery of 2400 grams of Narcotics. Whereas in the case of Allah, Ditta v. The State (2005 PCr.LJ 4 568) the Division Bench of Lahore High Court has granted bail to the accused from whom 02 kilograms of Poppy Straw were recovered. It is well-settled law that deeper appreciation of evidence is not permissible at the bail stage and the only material will be assessed tentatively. While considering the facts and circumstances of the

case tentatively, the Applicant has made out a good prima facie case for the grant of bail as envisaged under section 497(2), Cr.P.C.

14. For what has been discussed above, this application is accepted and the applicant is admitted to bail. He shall be released on bail provided he furnishes bail bonds in the sum of Rs.100, 000/- (rupees One lac only) with two reliable and resourceful sureties each in the like amount to the satisfaction of the learned trial Court. However, the learned trial Court shall endeavor to examine the complainant positively within one month and if the charge has not been framed the same shall be framed before the next date of hearing, and compliance report shall be submitted through MIT-II of this Court. The MIT-II shall ensure compliance with the order within time.

15. The observation recorded hereinabove is tentative and shall not prejudice the case of either party at trial.

JUDGE