

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No. 1676 of 2023

Date	Order with signature of Judge
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For hearing of bail application

14.09.2023

Mr. Qamar Riaz Virk advocate for the applicant
Ms. Abida Parveen Channar, Special Prosecutor ANF

Through this bail application under Section 497 Cr.P.C., the applicant Sajjan Ji has sought admission to post-arrest bail in F.I.R No. 24/2023, registered under Section 6/9(2) CNS Act,1997 at PS ANF-II Karachi.

2. The accusation against the applicant is that on 08.03.2023, he was arrested by ANF Police from Jinnah International Airport (JIAP), having been in possession of 756 grams of Methamphetamine (ICE). After observing the required formalities on the spot the applicant was brought to PS ANF-II Karachi where FIR was lodged under Section 6/9(2) CNS Act,1997. The earlier bail plea of the applicant has been declined by the Special Court–I CNS Karachi vide order dated 07.07.2023 in Special Case No. 52/2023.

3. It is inter-alia contended that the applicant is innocent and has falsely been implicated in this case; he next contended that the alleged offense does not fall under the prohibitory clause of Section 497 Cr. P.C. in view of the latest amendment in law. He further submitted that in the identical case of Abdul Qadir vs. The State 2020 MLD 469 learned Division Bench of this Court has granted bail to the accused from whose possession 680 grams of heroin was recovered and the case of the applicant is on better footing than that of accused Abdul Qadir who was granted bail by this Court. In support of his contention, he relied upon the case of Aya Khan vs. The State 2020 SCMR 350 and Ateeb ur Rehman vs. The State 2016 SCMR 1424 and submitted that in both cases good quantity of narcotics were recovered and bail was granted to the accused as such the applicant is entitled to the concession of bail. He further submitted that it is well-settled law that while adjudicating the question of bail Court should consider the minimum aspects of the sentence prescribed for the alleged offence in schedule. He has lastly prayed for allowing the bail application.

4. Ms. Abida Parveen Channar, learned Special Prosecutor ANF has opposed the application on the premise that the applicant/accused was arrested from JIAP, Counter International Departure Hall, and being suspicious when he was checked by ANF checking party, two packets were recovered from his traveling shoulder bag, he was then interrogated on which he admitted that being a poor man, he was going Sharjah (Dubai) for delivery of ICE Methamphetamine and took five lacks (5,00,000/-) and remaining Rs. 5,00,000/- was agreed to be paid to him by Muhammad Afzal at the time of delivery of the same to customer. She further argued that the prosecution is exempted from the non-association of independent witnesses in terms of section 25 of the Control of Narcotic Substance Act, 1997. She further argued that FIR was promptly lodged and the applicant was nominated in the FIR with his specific role of transporting the contraband items out of the country recovered Methamphetamine (ICE) was sent to the chemical examiner who reported it as positive, as such sufficient material was/is available to connect the applicant in the commission of the crime; that such type of crimes is on the rampant, therefore, they shall be dealt with iron hands, as such he is not entitled to the concession of post-arrest bail. She further submitted that there is no malice on the part of ANF officials. She 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. Under the Sindh Amendment Act, several significant amendments to the Act of 1997 have been made. Narcotic Drug has been substituted by a new clause(s) whereby "Narcotic Drug" has been redefined and divided into two categories viz. Category (i) and Category (ii); the heroin is mentioned in Category (ii). The punishments in relation thereto prescribed in clauses (a), (b), and (c) of Section 9 of the Act of 1997 have been changed and categorized according to categories (i) and (ii). An offense shall fall under Section 9(c) if the quantity of narcotic drug category (i) and (ii), psychotropic substance or controlled substance exceeds the limit specified in clause (b). An offense shall fall under clause (b) if the quantity of psychotropic substance or controlled substance or narcotic drug category (i) exceeds one hundred grams but does not exceed one kilogram, or if the quantity of narcotic drug category (ii) is fifty grams or less.

7. The Supreme Court in the case of *Socha Gul v. The State* (**SCMR 2015 1077**), 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.

8. In the case of *Noor Khan v. The State* (2021 SCMR 1212), the Supreme Court declined the bail to an accused from whom 1320 grams of cannabis was recovered by the police officials.

9. About the non-association of private persons, Section 25 of the CNSA exempted their presence in narcotics cases even otherwise the evidence of police officials is as good as any other citizen. Regarding the above, the Supreme Court in the case of *Zafar v. The State* (2008 SCMR 1254) held that Sections 20 to 22 of the CNS Act, 1997 are directory and their noncompliance would not be a ground for holding the trial/conviction bad in the eyes of law.

10. Prime facie the applicant was caught red-handed with a good quantity of Narcotics as disclosed in the FIR, which is supported by the report of the Chemical Examiner dated 03.05.2023. The Supreme Court in a recent judgment has held that this kind of offense is heinous as it contributes to the menace of drugs having grave repercussions on society, besides that the applicant has failed to point out any material to suggest that the applicant was falsely implicated in the aforesaid crime, in absence of such material no case of further inquiry has been made out.

11. Prima facie the material available on the record connects the applicant with the commission of the crime. The offense falls within the prohibitory clause of Section 497 Cr.P.C. The impugned order 7.7.2023 is well reasoned, proceeds on correct principles of law on the subject, and does not call for interference by this Court.

12. The material so collected and the record produced is sufficient to refuse the bail to the applicant at this stage. Thus, tentative assessment of material available on record, prima facie leads to a conclusion that there are no reasonable grounds to believe that it is a case of further inquiry.

13. Adverting to the proposition that in similar cases the Superior Court has granted bail to the accused, suffice it to say in bail matters the precedents cannot be taken into consideration until and unless the Supreme Court enunciates the principles of law which has binding effect under Article 189 of the Constitution, therefore, the case law cited by the learned counsel for the applicant is no help to him for the reason that applicant was found in possession of a good quantity of narcotics while leaving the country and if he might have succeeded in his endeavor the

name of the country could have been in jeopardy as such the ANF officials have no reasonable cause to falsely implicate the applicant in the narcotic.

14. For the foregoing reasons, the bail application is dismissed. However, it is clarified that observations made in this order are tentative and shall not prejudice the case of either party. The learned trial Court is directed to conclude the trial of the subject case expeditiously within one month and if not concluded at least the complainant must be examined positively. Thereafter if any material comes in favor of the applicant he may repeat the bail application which shall be decided on its merit and the observation recorded hereinabove will not come in his way.

JUDGE