

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No. 1657 of 2023

Date	Order with signature of Judge
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For hearing of bail application

13.09.2023

Syed Amin Shah advocate for the applicant.
Ms. Amna Ansari, Addl. P.G alongwith SI Rasheed Ahmed, SIU Saddar Karachi.

Through this bail application under Section 497 Cr.P.C., the applicant Yousuf Khan has sought admission to post-arrest bail in F.I.R No. 118/2023, registered under Section 6/9(i) 3-C CNSA at SIU Malir Karachi.

2. The accusation against the applicant is that on 30.05.2023 the applicant was arrested by complainant SI Danyal of SIU Malir Karachi and recovered three packets weighing 3 kilo and 20 grams charas. After observing the required formalities on the spot, the applicant was brought to SIU Malir Karachi, where an FIR was lodged against the applicant under Section 6/9(i) 3-C CNSA on the same day. The earlier bail plea of the applicant has been declined by the Additional Sessions Judge-IV Special Judge (CNS) Malir Karachi vide order dated 08.07.2023 in Special Case No.2930/2023.

3. In the bail application, the applicant/accused has submitted that the case against him is false and fabricated and he has been involved falsely and malafidely by the police against whom the complaint was made by the family of the applicant, which factum has been admitted by the police in its report; that the alleged recovery has been foisted upon him by police; that chemical report is managed; that the trial Court has failed to consider that alleged quantity of 2990 kilograms of the charas has been shown by the chemical examiner whereas in the F.I.R it is shown as 3 kilos and 20 grams such drastic discrepancy requires further inquiry; that there is a violation of section 103 Cr.P.C. though the alleged place of recovery is a thickly populated area; that the applicant is neither previous convict nor criminal nor hardened; that the case has been challaned and the applicant is no more required for further investigation; that the applicant prayed for grant of bail.

4. Learned Addl. P.G. 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. He further submitted that there is no malice on the part of SIU Malir Karachi as the applicant was arrested on spy information and 3 kilogram 20 grams chars were recovered from his possession. Learned Addl. P.G. further submitted that Section 103 Cr. P.C. does not apply in terms of Section 25 of the CNS Act, 1997. She prayed for the dismissal of the bail application.

5. I have heard the learned counsel for the parties and perused the material available on record with their assistance and the application dated 29.5.2023 moved by one Sher Ali about the alleged arrest of the applicant on the said date and time including the chemical report of the recovered contraband dated 16.5.2023.

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. In the present case, it is the case of the prosecution that allegedly 3 kilograms 20 grams of chars were recovered from the possession of the applicant, the chemical report of the narcotic drug as defined in Section 2 of the CNS Act, 1997 is positive, thus, the offense with which the applicant is charged is falling within the ambit of clause (c) of Section 9 of the Act. The punishment for the offense falling under clause (c) of Section 9 of the Act is death or imprisonment for life or imprisonment for a term that may extend to fourteen years.

8. 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.

9. 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.

10. 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.

11. Regarding the claim of false implication on the premise that his relative moved the application to the competent authority before time, this issue cannot be attended to without going beyond the barriers of tentative assessment, an exercise prohibited by the law. For the reason that the offense with which the applicant is charged is an offense against society at large and carries a punishment of death or imprisonment for life. The applicant was caught red-handed with a good quantity of Narcotics. The Supreme Court in the recent judgment has held that this kind of offense is heinous as it contributes to the menace of drugs having grave repercussions on the society.

12. 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 dated 8.7.2023 is well reasoned, proceeds on correct principles of law on the subject, and does not call for interference by this Court.

13. It is settled that for deciding the bail application the court has to observe the tentative assessment and a deeper appreciation of evidence is not required and it will not be fair to go into discussion about the merits of the case at this juncture. The record shows that the applicant has been booked in another criminal case No. 460/2022 registered against the applicant under section 324 PPC, at P.S Qaidabad Karachi, which prima facie, establishes that the applicant is prone to repeating the offense, therefore, the prosecution has collected sufficient material to connect the applicant with the alleged crime.

14. The guilt or innocence of the applicant is yet to be established at trial and it is well-settled that at the bail stage, only tentative assessment is to be undertaken and no deeper examination is permissible, however, the material so collected and the record produced is sufficient to refuse the

bail to the applicant at this stage. Thus, a 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 based on the complaints made by the family of the applicant to the higher authorities against the police.

15. 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.

JUDGE