

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No.1686 of 2023

Date	Order with signature of Judge
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For hearing of bail application

18.9.2023

Mr. Shamsul Hadi advocate for the applicant
Ms. Abida Parveen Channar, Special Prosecutor ANF alongwith
IO/Inspector Asghar Ali, PS ANF Clifton Karachi

Through this bail application under Section 497/498 Cr.P.C., the applicant Sajjad Ali has sought admission to post-arrest bail in F.I.R No. 15/2022, registered under Section 6(1) 3(C) CNS Act at P.S ANF Clifton Karachi.

2. The charge against the applicant is that on 03.05.2023 Complainant Inspector Asghar Ali of PS ANF Clifton, Karachi arrested the applicant and recovered Charas weighing 1200 grams, from his possession. After observing the required formalities at the spot the recovered narcotics and the applicant were brought to P.S ANF Clifton Karachi where FIR was lodged under Section 6(1) 3 (C) of CNSA on the same day. The prosecution obtained the chemical report of the alleged recovered Narcotics on 15.05.2023, with a positive result. The earlier bail plea of the applicant has been declined by the Special Court-II CNS vide order dated 27.06.2023 in Bail Application No. 79/2023.

3. Mr. Shamsul Hadi, learned counsel for the applicant/accused argued that the applicant/accused is innocent and has falsely been implicated in this case. Learned counsel emphasized that according to the prosecution story, no independent witness has been cited by the complainant though he received spy information. Per learned counsel, the alleged incident took place near the Bombay Hotel overhead bridge Cantt. Railway Station Karachi; however no efforts were made in this regard, which is in clear violation of Section 103 Cr.P.C. He argued that both the mashirs are subordinate to the complainant and a small quantity of charas was sent to the Chemical Examiner for the test, which creates doubt in the prosecution story, however, the applicant cannot be saddled with the entire quantity of charas allegedly recovered from the applicant, therefore, the false implication of the applicant/accused cannot be ruled out at this stage. He lastly prayed for allowing the bail application.

4. On the other hand learned SPP for ANF argued that the applicant/accused was arrested on the spot and from his possession Charas

weighing 1200 grams was recovered; that no enmity has been established by the defense counsel with the ANF officials to implicate him in the huge quantity of Narcotics. The learned Special Prosecutor has supported the impugned bail declining the order passed by the learned trial Court and maintaining that applicant is involved in a “heinous offense” as such no concession of bail could be granted to the applicant. She added that the embargo contained in Section 51 of the Control of Narcotics ‘Substance Act 1997 does apply to the case of the present applicant, which is not in derogation of Section 103 Cr. P.C. The learned Special Prosecutor has submitted that the Chemical Examiner report is positive and supports the case of prosecution. She further argued that the complainant has rightly taken out the sample from the entire charas and sent it for chemical examination as such there is no illegality in conducting the said proceedings as such the applicant cannot take this defense at the bail stage to create doubt in the prosecution story. She further submitted that as per 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 Cr. PC. She prayed for the dismissal of the bail application.

5. I have heard learned counsel for the applicant and learned Special Prosecutor ANF and have carefully examined the material available on record, including the recovery of narcotics and test report dated 15.05.2023 submitted by the Chemical Examiner after examining the narcotics allegedly recovered from the possession of the applicant, according to the said test reports, the narcotic substances, which were recovered from the applicant, weighing 1200 grams charas.

6. Under the Sindh Amendment Act of 2021, 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 heroines 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. In the present case, it is the case of the prosecution that allegedly

1200 grams of charas was recovered from the possession of the applicant, thus, the offense with which the applicant is charged falls within the ambit of clause (c) of Section 9 of the Act may extend to fourteen years. 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. Concerning 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.

7. Adverting to the grounds raised by the learned counsel for the applicant as discussed supra, suffice it to say that the stance taken by the applicant cannot be appreciated in depth at this stage, more particularly in terms of the law laid down by the Supreme Court in the cases of *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 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. Further the Supreme Court in a recent case has held that the menace of drugs has taken alarming dimensions in this country partly because of the ineffective and lackadaisical enforcement of the laws and procedures and cavalier manner in which the agencies and at times Courts of the country address a problem of such serious dimensions. Studies based on conferences and seminars have very often shown that the menace is deep-rooted. 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. 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.

8. 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 15.05.2023. 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. The impugned order 27.6.2023 is well reasoned, proceeds on correct principles of law on the subject, and does not call for interference by this Court. Resultantly the instant bail application is dismissed with direction to the trial court to examine the material witnesses, particularly the complainant of the case, and conclude the trial within one month and if the charge has not been framed the same shall be framed on the next date of hearing positively with intimation to this court through MIT-II.

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

JUDGE