

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No.1443 of 2023

Date	Order with signature of Judge
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For hearing of bail application

28.9.2023

Mr. Shah Imroz Khan advocate for the applicant/accused
Ms. Abida Parveen Channar, Special Prosecutor ANF alongwith
IO/Inspector Zahid Ali Channa, presently posted at ANF Multan

admission to post-arrest bail in F.I.R No. 18/2022, registered for offen

Through this bail application under Section 497 Cr.P.C., the applicant Ismail has sought ses under Section 6/9(C) CNS Act 1997 at P.S Clifton Karachi.

2. The charge against the applicant is that on 25.05.2023 Complainant Inspector Zahid Ali Channa of PS Clifton, Karachi arrested the applicant and recovered Charas weighing 100 Kgs, 900 grams of Heroin, and 1100 grams of Methamphetamine from his possession. After observing the required formalities at the spot, the recovered narcotics and the applicant were brought to P.S Clifton Karachi where the subject FIR was lodged under Section 6/9(C) CNS Act 1997 on the same day. The prosecution has obtained the chemical report of the alleged recovered Narcotics with a positive result. The earlier bail plea of the applicant has been declined by the Special Court–II CNS vide order dated 07.09.2022 in Bail Application No. 127/2022.

3. 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 prosecution miserably failed to prove recovery of alleged Narcotics from the exclusive possession of the applicant therefore, the charge of possession of the accused is defective. Besides, there was/is a clear violation of Section 103 Cr. P.C., therefore creates serious doubts in the prosecution story; hence the case needs further inquiry. He argued that both the mashirs are subordinate to the complainant, however, the prosecution succeeded in obtaining a positive Chemical Examiner report of the subject narcotics except Methamphetamine, which has been declared Urea in the laboratory vide report dated 7.6.2022, which is neither a banned substance nor does it come under the Narcotic Drugs and Psychotropic Substances under the CNS Act. Per learned counsel, the entire prosecution story turns out to be

doubtful as such the applicant cannot be saddled with the other narcotics allegedly recovered from the nearby abundant place and not from the exclusive possession of the applicant. He emphasized that to extend the benefit of the doubt to an accused, it is not necessary that there be multiple infirmities in the prosecution case or several circumstances creating doubt. Per learned counsel, a single or slightest doubt, if found reasonable, in the prosecution case would be sufficient to entitle the accused to its benefit even at the bail stage, not as a matter of grace and concession but as a matter of right, therefore, in such circumstances, the false implication of the applicant/accused cannot be ruled out at this stage. In support of his contention,s, he relied upon the cases of Anwar Ali and another v The State **2002 P Cr. L.J 186**, Gul Zaman v The State **1999 SCMR 1271**, Shaukat Ali v The State **2017 P Cr. L.J 1020**, Imtiaz v The State **2014 YLR 892**, The State v Syed Abdul Qayum **2001 SCMR 14**, Syed Ali Qasim Gillani v The State **2012 YLR 1206** and Amir Muhammad Siddiq and another v The State **2023 P Cr. L.J Note 10**. He lastly prayed for allowing the bail application.

4. On the other hand, Special Prosecutor ANF argued that the applicant/accused was arrested the applicant and recovered Charas weighing 100 Kgs, 900 grams of Heroin, and 100 grams of Methamphetamine from his possession. He further 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 of the narcotics is positive and supports the case of prosecution. He 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, the punishment of the subject offense is death and life imprisonment, which falls within the prohibitory clause of Section 497 Cr. PC. The learned Special Prosecutor ANF pointed out that the recovery of a huge quantity of narcotics cannot be foisted upon the applicant; hence, the applicant/accused is not entitled to a grant of bail.

5. Considering the submissions of learned counsel for parties, going through the recovery memo of alleged narcotics, the alleged statement/interrogation report of the applicant, and the report of the chemical examiner dated 15.6.2022 as well as the progress report submitted by the learned trial Court whereby the matter is fixed for further hearings. Prima facie the applicant was arrested on 25.05.2022 and on his pointation the ANF police recovered the aforesaid narcotics after completing the formalities Investigating officer submitted a challan before

the Special Court CNS Karachi on 14.06.2022, prima facie the matter is in progress and there is likely hood of its conclusion nearly on the premise that there are only four witnesses who are required to be examined by the trial Court within reasonable time.

6. Coming to the main point raised by the learned counsel for the applicant that the alleged narcotics were not recovered from the exclusive possession of the applicant but rather from the bushes; suffice it to say that the term Constructive possession is the legal possession of an object that is not in the person's direct physical control. Like other constructive meanings, constructive possession legally functions as actual possession in a variety of ways. However, a positive and legal 'chemical report' is a 'must' for the trial of the accused for such a charge, which report prima facie is available on record. Prima facie, the huge quantity of contraband was recovered from the constructive possession of the applicant as he was caught red-handed on the spot, but no plausible explanation has been offered by the applicant concerning the narcotics substance.

7. The likelihood of such an offense being repeated by the applicant cannot, therefore, be ruled out at this stage, if the applicant is released on bail. The case of the applicant also comes within the scope of the exception of the likelihood of repeating the offense. However, 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.

8. Adverting the point raised by the applicant that Methamphetamine (ICE), which has been declared Urea in laboratory vide report dated 7.6.2022, suffice it to say that if 100 grams of Methamphetamine is excluded as per chemical report which is reportedly under challenge by the order of the trial Court dated 11.04.2023, the other narcotics falls within category (i) specified in clause (s) of Section 2 of the Act of 1997 substituted through The Control of Narcotics Substance (Sindh Amendment) Act, 2021, and the net weight thereof is more than enough to attract clause (c) of the Act, 1997 as amended up to date. Prima facie, this ground is of no help to the applicant at this stage, for the reason that the other narcotic material was sent to chemical analysis, which result is positive. The punishment for the offense falling under clause (c) is death or imprisonment for life. 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, the applicant is not entitled to the concession of bail and there appears to be no exception to this rule in the facts and circumstances of the instant case.

9. 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.

10. The Supreme Court in the recent case in narcotics has held that dealing in narcotic drugs is usually the business of the persons involved therein, and is not a spontaneous or one-time act, and the person is often involved in it as the carrier for the transportation, supply and sale of narcotic drugs, in such circumstances the case law cited by the learned counsel for the applicant are of no help to him for the reason discussed supra.

11. 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 under the law and if the charge is not framed the same shall be framed on the next of hearing without fail.

12. It is clarified that the observations made herein are tentative and shall not prejudice the case of either party or influence the learned trial Court in any manner in deciding the case strictly on merits under the law.

JUDGE