

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**

Cr. Bail Application No.S-654 of 2023

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE(S)</b>
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1. For orders on office objection.
2. For hearing of main case.

*Date of Hearing* : 11.09.2023

*Date of Order* : 11.09.2023

**Mr. Ashfaque Ali Khaskheli, Advocate for Applicant**  
**Ms. Safa Hisbani, Assistant P.G Sindh.**

**ORDER**

**ARSHAD HUSSAIN KHAN, J.-** Through this criminal bail application under Section 497 Cr.P.C, applicant Sajid Ali Chohan seeks his release on post arrest bail in Crime No.180 of 2023, registered at P.S A-Section, Tando Allahyar for offence under Section 9(c) of Control of Narcotic Substances Act, 1997.

2. It is alleged that on 16.03.2023, the complainant SIP Umed Ali Lakho alongwith his subordinate staff were patrolling in the area and after snap checking they caught hold the present applicant coming on Motorcycle and from his possession a black shopper was recovered wherein 1445 grams of charas were found present for which F.I.R was lodged.

3. Learned Counsel for the applicant / accused has contended that applicant is innocent and has falsely been implicated in this case by the police malafidely and with ulterior motives. He further contended that no independent private person has been associated by the complainant to witness the alleged recovery despite the place of recovery is thickly populated area, hence, there is clear violation of mandatory provision of Section 103 Cr.P.C. He further contended that all the PWs in this case are subordinate to the complainant, as such, false implication of the applicant in the alleged offence cannot be ruled out. He further contended that there is delay of four days in sending the sample of the alleged contraband to the chemical examiner for its analysis. He lastly

submitted that the applicant is in jail since his arrest and he is no more required for further investigation and that there is no record that applicant is previously convicted in any case of similar nature in the past. He, therefore, prays his release on bail. In support of his arguments, he has cited cases of JAMAL-UD-DIN alias ZUBAIL KHAN v. The STATE (2012 SCMR 573), ISMAIL v. The STATE (2023 MLD 942), WAJID alias WAJI v. The STATE (2016 P.Cr.LJ 831), ALI HASSAN alias HASAN v. The STATE (2014 YLR 188), ALI KHAN v. The STATE (2022 P.Cr.LJ 690), TARIQUE alias TARI v. The STATE (2012 YLR 2684) and MUHAMMAD WASEEM MUGHAL v. The STATE through Advocate-General of Azad Jammu and Kashmir, Muzaffarabad (PLD 2023 High Court (AJK) 11.

4. In contra, learned A.P.G has opposed the bail plea of the applicant on the ground that the applicant is named in the FIR and huge quantity of charas has been recovered from his possession; that Section 103 Cr.P.C is not applicable in the narcotic cases; that no enmity or ill-will is alleged by the applicant against police party. So far as the delay in sending the sample to the chemical analyzer as argued by the learned counsel is concerned, she while referring to the case of GULL DIN v. The STATE through P.G. Punjab and another (2023 SCMR 306) submits that the Hon'ble Supreme Court has held that delay in sending the charas to the chemical analyzer would not entitle the applicant to the concession of bail. She has also invited attention of the Court to Sr. No.3 of the newly Amendment of 2022 and lastly prayed that this bail application may be dismissed.

5. Heard learned Counsel for the applicant as well as learned A.P.G and with their assistance perused the record.

6. It appears that the applicant /accused has been found in possession of 1445 grams of charas but before discussing the gravity of offence, it will be appropriate to go through the law as per new Amendment, 2022, whereby Section 9 of CNS Act has been substituted as under:-

“9 Punishment for contravention of sections 6, 7 and 8. – (1) Wherever contravenes the provisions of sections 6, 7 and 8 regarding narcotics drugs shall be punished with punishment as given in column (3) of the TABLE below with regard to offence committed as mentioned in column (2) thereof as follows:

TABLE

S. No.	Offence		Punishment
	Type of Narcotics	Quantity	
(1)	(2)		(3)
3.	Charas	(a) Up to 499 grams	Imprisonment which may extend to five years but shall not be less than ten months along-with fine which may be up to forty thousand rupees.
		(b) 500 grams to 999 grams	Imprisonment which may extend to nine years but shall not be less than five years along-with fine which may be up to eighty thousand rupees but not less than forty thousand rupees.
		(c) 1000 grams to 4999 grams	<b><u>Imprisonment which may extend to 14 years but shall not be less than nine years along-with fine which may be up to four hundred thousand rupees but not less than eighty thousand rupees.</u></b>

(emphasis supplied)

7. The record reflects that the applicant has been apprehended by the police party and from his exclusive possession the charas weighing 1445 grams was recovered. It is pertinent to mention that when the quantity of narcotics exceeds one kilogram, the case falls within the provision of Section 9(c) of CNS Act, 1997, for which the penalty as provided by afore-referred newly Amendment is upto 14 years but not less than 09 years alongwith fine as disclosed at Sr. No.3 in category (c) of the said Amendment. In the case in hand, the police party has apprehended the accused alongwith recovery of 1445 grams of charas, hence, the offence committed by the applicant is heinous and dangerous to the lives of the people for which applicant cannot freely be allowed, hence, the applicant's case in view of the above amendment falls within the prohibitory clause of Section 497 Cr.P.C. With regard to the non-association of private persons the application of Section 103 Cr.P.C is

excluded especially in narcotic cases as provided in Section 25 of the CNSA, even otherwise, according to the well observance of the Hon'ble Supreme Court, the police officials are as good witnesses as any other private persons. No mala fide, ill will or any grudge has been shown against the police for falsely implicating the applicant in the present case, nor is it possible for the police to plant such a huge quantity of charas. On the tentative assessment of the material on record, the applicant is prima facie connected with the commission of an offence which is not only against the state but also against the society at large. Reliance in this respect is placed upon the case of **SOCHA GUL v. The STATE (2015 SCMR 107)**, the Hon'ble Supreme Court while considering the offence under CNS Act to be heinous against the society at large, has observed as under:-

*“8. It is pertinent to mention here that offences punishable under C.N.S. Act of 1997 are by its nature heinous and considered to be the offences against the society at large and it is for this reason that the statute itself has provided a note of caution under section 51 of C.N.S. Act of 1997 before enlarging an accused on bail in the ordinary course. When we refer to the standards set out under section 497, Cr.P.C. for grant of bail to an accused involved in an offence under section 9(c) of C.N.S. Act of 1997, even on that basis we find that an accused charged with an offence, prescribing various punishments, as reproduced above, is not entitled for grant of bail merely on account of the nature or quantity of narcotic substance, being four kilograms. Firstly, as deeper appreciation of evidence is not permissible at bail stage and secondly, in such situation, looking to the peculiar features and nature of the offence, the trial Court may depart from the normal standards prescribed in the case of Ghulam Murtaza (supra) and award him any other legal punishment. Thus, in our opinion, ratio of judgment in the case of Ghulam Murtaza (supra) is not relevant at bail stage.*

8. In view of the above, particularly the law laid down by the Hon'ble Supreme Court in the case (*supra*), it is observed that the applicant / accused has failed to make out his case for grant of bail, hence, the present bail application is dismissed, however, with direction to the learned trial Court to proceed with the case expeditiously and decide it preferably within a period of 03(three) months. In case, the prosecution fails to procure its witnesses and trial is not concluded within stipulated time, applicant shall be at liberty to file fresh bail application before the trial Court, which, if filed, shall be decided by the trial Court on its own merits.

9. Needless to say, the observations made in this order are of a tentative nature and only for the purposes of this bail application. Nothing herein shall affect the determination of the facts at the trial or influence the Trial Court in reaching its decision on the merits of the case.

*JUDGE*

Shahid