

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Criminal Bail Application No.S-108 of 2024

Applicant/ accused: Jurial Shah alias Jani Shah son of Lutuf Ali Shah,
In person.

The State: Through Mr. Shahzado Saleem, Additional P.G Sindh.

Date of hearing: 24.06.2024

Date of order: 24.06.2024

ORDER

Muhammad Saleem Jessar, J: Through instant bail application, applicant Jurial Shah alias Jani Shah seeks his admission on pre arrest bail in Crime No.16 of 2024, for offence U/S 9(i) (3) (b) CNS (Amendment) Act, 2022 registered with P.S Kaloi. The applicant preferred his anticipatory bail before the Court of Sessions wherefrom it was assigned to Addl. Sessions Judge-I/MCTC, Tharparkar at Mithi vide Criminal Bail Application No.09 of 2024, who after hearing the parties, has turned down his request through order dated 31.05.2024. Hence, instant bail application has been maintained.

2. The crux of the prosecution case as unfolded by the complainant/ ASI Allah Dino of PS Kaloi are that on 22-05-2024 he alongwith his subordinates namely PC Jumoon and PC Allah Jurio duly armed with official ammunition and weapons, boarded on government vehicle bearing No.SPF-277 together with driver PC Muhammad Arab left the PS vide daily diary entry No. 11 at 1600 hours for patrolling as well arresting of drug peddlers in the area. After visiting different places when they

reached Shakoor Stop at main road where they received spy information that one Gomando is selling charas. Upon receipt of such information, they proceeded towards pointed place and saw a person was standing on western side of the road who on seeing them attempted to flee away but was apprehended by police party. On his body search, a black color polythene bag containing small pieces of charas was secured. Due to non-availability of private persons, he by citing his subordinates as mashirs enquired from him of his whereabouts who disclosed his name to be Gomando. On further enquiry, he disclosed that he used to sale the contraband of one Jurial Shah @ Jani Shah son of Lutuf Ali Shah (the applicant). The shopper secured from the accused was unfolded, which contained small pieces of charas. On weighing it became 550 gram of chars. On his body search, cash amount of Rs.500/= was also secured. To such effect present F.I.R was lodged.

3. Applicant is present in person; however, his counsel is not in attendance without intimation. He submits that he has got no nexus with co-accused Gomondo from whose possession the alleged Charas weighing 550 grams was secured, has been bailed out by trial court. He, therefore, submits he is innocent and prayed for confirmation of bail.

4. On the other hand, learned Additional P.G appearing on behalf of State opposes the bail application; however, does not controvert the fact that neither applicant was present at the place of incident nor any incriminating was secured from his possession so also he has been implicated in this case on the statement of co-accused Gomondo.

5. Heard and perused.

6. Admittedly, at the time of offence applicant was neither available nor any incriminating article connecting him with commission of offence has been shown to have been recovered by the police even after registration of the FIR. Co-accused, who was arrested by the police at spot alongwith certain quantity of contraband had disclosed before police to the effect he used to sale out charas of one Jurial Shah (the applicant). It is settled law that even confession of co-accused cannot be made basis for maintaining conviction against any individual and the statement so made by co accused before police is in violation of Articles 38 and 39 of Qanoon-e-Shahadat Order (Evidence Act), 1984. As far as contention raised by learned A.P.G that no animosity or ill-will has been shown against police, therefore, applicant, against whom series of criminal cases are registered, is not entitled for the bail is concerned, carries no weight. It is settled law that each case has its own merit and one cannot be penalized upon the basis of list of other cases; more particularly when he had not been shown convicted in any of the offence by the competent court of law. Since nothing has been shown recovered from the possession of applicant nor he was available at the time of offence and his name has been disclosed/taken by co-accused before police, which cannot be made basis for maintaining conviction against him. The co-accused, from whose possession alleged contraband was secured, has been bailed out by the trial court and case of applicant is on better footing then that of co-accused; hence propriety of law demands applicant should be treated at par by extending him a constant treatment. In case he may be taken into custody today, tomorrow again he will be bailed out on the ground of parity. Reliance can be placed upon the case of Muhammad Ramzan vs. Zafarullah and another (1986 SCMR 1380). Moreover, punishment

provided by law for the alleged offence does not fall under the prohibitory clause of section 497 Cr.P.C, therefore bail in such like cases is a rule and refusal will be an exception; hence the case against applicant requires further inquiry within meaning of sub-section (2) of section 497 Cr.P.C. Reliance can be had from the case of Muhammad Tanveer vs. The State (PLD 2017 SC 733).

7. It is well settled principle of law that every accused would be presumed to be blue eye boy of law until and unless he may be found guilty of alleged charge and law cannot be stretched upon in favour of prosecution particularly at bail stage.

8. Accordingly, instant bail application is hereby allowed. Consequently, ad-interim pre arrest bail granted to applicant Jurial Shah alias Jani Shah vide order dated 06-06-2024 is hereby confirmed on same terms and conditions.

9. Needless to mention that the observations made hereinabove are tentative in nature and shall not prejudice the case of either party at trial.

JUDGE

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observations made hereinabove are of tentative in nature and the trial court shall not influenced to prejudice the case of either party at the time of trial.

No doubt, the applicant is nominated in the F.I.R and he has been booked in this case on the statement of co-accused Gomondo. The disclosure made by co-accused Gomondo during custody of police has no value in the eyes of law and this only aspect of the case makes the case of applicant as one of further inquiry. Statement of co-accused on which basis, the applicant has been made as an accused in this case is in violation of Articles 38 and 39 of

the Qanun-e-Shahadat (evidence Act of 1984), hence conviction cannot be maintained on the basis of statement made by co-accused whilst in custody of police. Further, co-accused Gomondo, from whom police allegedly recovered Charas weighing 550 grams, has been bailed out by the trial court. As far as objection raised by learned A.P.G that no malafide or ill will has been urged against police for implicating him falsely is concerned, suffice to say when statement of co-accused upon which basis the applicant has been implicated is in contravention of the Articles of the evidence Act, hence police being custodian of law was under obligation to follow provision of law instead of implicating the applicant in view of dicta laid down by Hon'ble Supreme Court of Pakistan in case of Muhammad Ramzan Vs. Zafar Ullah and another (1986 SCMR 1380) and in case of Muhammad Tanveer Vs. The State and another (PLD 2017 S.C 733), the case against applicant requires further inquiry. In case the applicant may be taken into custody today, tomorrow again he will be released on bail by trial court on the ground of consistency. Since nothing incriminating has been shown recovered from possession of the applicant besides the punishment provided by law for such an offence does not exceed limits of prohibitory clause of Section 497 Cr.P.C, hence prosecution has to establish its charge through evidence then trial court has to determine accusation against the applicant. It is well settled principal of law that every accused would be presumed to blue eye by law until and unless he may be found guilty of alleged charge and law cannot be stretched upon in favour of the prosecution particularly at bail stage.

7. In light of the above, the ad-interim pre-arrest bail previously granted to applicant Jurial Shah alias Jani Shah vide order dated 06-06-2024 is hereby confirmed on the same terms and conditions.

8. The observations made in this decision are of a tentative nature and will not influence the merits of the case.

JUDGE

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