ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1117 of 2024

Date	Order with signature of Judge

For hearing of bail application

Date of hearing and Order:- 05.7.2024

Mr. Waqas Ali Chaudhry advocate for the applicant / accused
Mr. Mumtaz Ali Shah, Assistant PG

O R D E R

Adnan-ul Karim Memon, J:- The Applicant Jawad Khan is seeking post-arrest bail in F.I.R No.4 of 2024 under section 6/9-2 SNo.3 and 6 -2 S No.6 of CNS Act 2022 of PS Excise West Karachi.

2.   The earlier bail plea of the accused has been declined by the trial court vide order dated 14.5.2024 on the premise that Ice was recovered from co-accused Aqib; and, the applicant was accompanying him as such his case falls within the meaning of Section 29 of CNS Act 20/2022 punishable within imprisonment of ten years. Prima facie this is hardly a ground to form an opinion at this stage as prima facie no recovery has been effected from the personal search of the applicant besides the co-accused has been granted bail vide order dated 14.04.2024.

3.   The accusation against the applicant is that he was accompanying the main accused from whom alleged recovery was effected. The question is whether the applicant can be saddled with possession and transporting the narcotics in terms of Section 6/9 C of CNS Act 2022, prima facie this question needs to be taken care of by the trial Court as the Supreme Court in the case of *Zahid Sarfarz Gill v The State* **2024 SCMR 934** has held that the police and members of the Anti Narcoic Force failed to record or photograph at the time of search of the accused when search, seizure or arrest is made, as the law permits the use of modern device or techniques, however in the present case the police has failed to apply the test so directed by the Supreme Court therefore in all cases about Narcotics, this modern device is required to be used in future cases without fail in terms of the ratio of the decision of the Supreme Court in the case of Zahid Sarfaraz Gill.

4.   About the plea of the learned counsel that the rule of consistency does apply in the matter, prima facie his contention seems to be in line

with the order dated 14.04.2024 passed by the learned VIII Additional Sessions Judge Karachi West in Cr. Bail Application No. 1135 of 2024. In such circumstances of the case, therefore reliance is placed upon the case of *Kazim Ali v The State*, **2021 SCMR 2086**. In the said case, the Supreme Court held that where the role ascribed to a large number of accused was general which cannot be distinguished from each other, and technical grounds that consideration for pre-arrest and post-arrest bail are on different footing would be only limited up to the arrest of the accused persons because soon after their arrest they would become entitled to the concession of post-arrest bail on the plea of consistency and as such the accused persons in such case were admitted to pre-arrest bail.

5.   The Supreme Court in the case of *Tariq Bashir vs. The State* (**PLD 1995 S.C 34**) has held that the grant of bail in bailable offenses is a right while in non-bailable offenses is concession/grace. The applicant/accused has been in jail since his arrest and are no longer required for investigation, moreover, there is nothing on record that the present applicant is previous convict.

6.   Going ahead on the subject, there is no cavil to the proposition that courts, by the very purpose of their creation, are required to do justice. The expression "justice" in its broadest sense, is the principle that every individual must receive, which he deserves according to law. Justice is a notion described as the constant perpetual will to allot to every man what is due to him. Every criminal wrong must be reciprocated with procedural stringency and penal consequences. However, courts, even at the bail stage, are not bound by the provisions of law applied in the FIR rather have to see the offence applicable from the contents of the prosecution case. Additionally, it is also a well-settled principle of law that mere heinousness of offense is no ground to reject the bail plea. The basic concept of bail is that no innocent person's liberty is to be curtailed until and unless proven otherwise.

7.   The essential prerequisite for the grant of bail by sub-Section (2) of Section 497, Cr.P.C. is that the Court must be satisfied based on the material placed on record that there are reasonable grounds to believe that the accused is not guilty of an offense punishable with death or imprisonment for life. The condition of this Clause is that sufficient grounds exist for further inquiry into the guilt of the accused, which would mean that the question should be such, that has nexus with the result of the case and can show or tend to show that the accused was not guilty of the offense with which he is charged.

8.   Primarily, grant or rejection of bail is a discretionary relief but such discretion should be exercised fairly and judicially. The word discretion when applied to Court means sound discretion judiciously guided by law and to lessen the hardship of the people. For what has been discussed above, prima facie the applicant has made out a case for further inquiry into their guilt within the meaning of Section 497(2), Cr.P.C.

9.   For the foregoing reasons, the applicant Jawad Khan is admitted to post-arrest bail in Crime No. 04 of 2024 under Section 6/9-2 S. No. 3 and 6/9-2 S No. 6 of CNS amended Act 2022 of PS Excise West subject to his furnishing solvent surety in the sum of Rs. 100,000/- (Rupees one hundred thousand Only) and P.R Bond in the like amount to the satisfaction of the trial Court.

10.   Before parting with this order, it is observed that the observations made in this order are tentative and the same would have no bearing on the outcome of the trial of the case. It is made clear that in case, the applicants/accused during proceedings before the trial Court, misuse the concession of bail, then the trial Court would be competent to cancel the bail of the applicant/accused without making any reference to this Court.

<div align="right">JUDGE</div>

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