

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Bail Application No.S- 577 of 2023

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on O/objection at flag-A.
2. For hearing of bail application

Date of hearing **22.09.2023**

Mr. Rukhsar Ahmed Junejo, Advocate for applicant.
Syed Sardar Ali Shah Addl. Prosecutor General.

ORDER

KHADIM HUSSAIN SOOMRO, J; Applicant Aslam Ali son of Nadir Ali, seeks his release on post-arrest bail in Crime No.59 of 2023 registered at Police station, Khuhra District Khairpur, for offences U/S 9(c) CNS Act, whereby he was found in possession of 11000 grams of hemp (Bhang). The applicant prefers such a plea before the trial Court and the same was turned down vide order dated 19.07.2023.

2. Facts of the prosecution case mentioned in the FIR are that on 19.06.2023 at 1030 hours, accused Aslam was apprehended by the police party of Police Station, Khuhra, headed by complainant ASI Mazhar Ali Kandhro and he recovered (11000) grams of hemp/bhang, lying in plastic borta (bag) from his possession. The police party sealed said contraband at the spot under mashirnama in the presence of mashirs. Thereafter, the complainant brought the accused and recovered case property at the Police Station, where he lodged an FIR on behalf of the State.

3. After registration of the case, the police took-up for the investigation and, after completion of legal formalities have, submitted the challan before the trial Court.

4. Learned Counsel for the applicant/accused submits that applicant has enmity with police officials; however, nothing was secured from the possession of the applicant, and alleged hemp/Bhang, shown to have been recovered from the possession of the accused, has been foisted upon him by the Police; therefore, false implication of present applicant cannot be ruled out, even otherwise hemp can easily be foisted as has been done in this case. He further contends that if the prosecution may succeed in proving its case in the trial, even then, the quantity sent for chemical examination will be considered, and at this juncture, case of further inquiry is made out; therefore, he may be enlarged on bail. He, however, has also placed reliance upon the case of Ghulam Murtaza and another v. The State PLD 2009 Lahore 362 and *Janib Ali Zardari v. The State (2014 YLR 632)* therefore, on this score bail was granted to accused.

5. Learned Additional Prosecutor General opposes the grant of bail on the ground that the applicant is nominated in the FIR. Alleged hemp/Bhang was recovered from the exclusive possession of the applicant, and the offence as alleged falls within the prohibitory clause of Section 497 Cr.P.C. Police officials are as good as private ones; therefore, he requests that the applicant is not entitled to post-arrest bail.

6. Heard learned counsel for the applicant, learned Additional Prosecutor General and have gone through the material made available on record.

7. As per the case of the prosecution, the police received prior information about the applicant accused allegedly standing at Manjhand

Damdano, but police have failed to associate a private person, either witness or mashir, with a recovery. There is a clear violation of Section 103 Cr.P.C. In this context, the dictum laid down in the case, *State Versus Bashir and others* reported in PLD 1997 SC 408, the Apex Court held that requirement of S.103 Cr.P.C, that two members of the public of the locality should be mashirs to the recovery is mandatory unless the prosecution shows that in the circumstances of particular case, it was not possible to have two mashirs from the public. Moreover, the counsel for the applicant pleaded enmity of the applicant accused with the police. The learned Additional Prosecutor General informed that there is no previous record of the applicant to be involved in such type of cases.

8. The offence, as alleged, provides a lesser punishment of 07 years; while deciding the bail application, lesser punishment is to be considered, which does not fall within the prohibitory clause of section 497 Cr.P.C. In the case of *Muhammad Tanveer V. State (PLD 2017 SC 733)*, the Supreme Court of Pakistan has expressed astonishment and sadden that bail is routinely denied in situations and in offences that don't come within the restriction provided in section 497 of the Cr.P.C on dubious justifications and the same was considered as an unnecessary financial burden on the general public, especially those accused of such crimes. The relevant ratio of the judgment is reproduced as under:-

“We are shocked and disturbed to observe that in cases of this nature, not falling within the prohibition contained in section 497, Cr.P.C., invariably grant of bail is refused on flimsy grounds. This practice should come to an end because the public, particularly accused persons charged for such offences are unnecessarily burdened with extra expenditure and this Court is heavily taxed because leave petitions in hundreds are piling up in this Court and the diary of the Court is congested with such like petitions. This phenomenon is growing tremendously, thus,

cannot be lightly ignored as precious time of the Court is wasted in disposal of such petitions. This Court is purely a constitutional Court to deal with intricate questions of law and Constitution and to lay down guiding principle for the Courts of the country where law points require interpretation.

9. The Apex Court, in the case of *Muhammad Imran v. The State (PLD 2021 SC 903)* has formulated the grounds for the case to fall within the exception meriting denial of bail as (a). the likelihood of the petitioner's abscondence to escape trial; (b) his tampering with the prosecution evidence or influencing the prosecution witnesses to obstruct the course of justice; or (c) his repeating the offence keeping in view his previous criminal record or the desperate manner in which he has *prima facie* acted in the commission of offence alleged. Further, the Apex Court held in the said order that the prosecution has to show if the case of the petitioner falls within any of these exceptions on the basis of the material available on the record. In the case at hand, the prosecution has failed to establish any of the above grounds, meriting the denial of the application of the applicant. The Apex Court also settles that deeper appreciation of the evidence is not permissible while deciding the bail application, and the same is to be decided tentatively on the basis of material available on the record.

10. It is settled law that if an accused is wrongly released on bail. After trial, he will be found guilty of the alleged charge, then again he will be taken into custody, but after a prolonged trial, if the prosecution fails to establish its case against the accused, the golden days spent by the accused in jail and incarceration faced by the accused cannot be repaired with.

11 . In view of the peculiar circumstances of the case, the instant application is allowed. Applicant Aslam Ali Korai shall be released on bail

subject to his furnishing solvent surety in the sum of Rs.50,000/- (Rupees Fifty thousand) and PR bond in the like amount to the satisfaction of the trial Court.

12. Needless to mention here that the observations made herein above are tentative in nature, and the trial Court may not influence the observation made herein and decide the case on its own merits as per the evidence and the material made available before it.

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