

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR.

Cr.B.A.No.S- 178 of 2024.

For Hearing of bail application.

08.04.2024.

Mr.Muhammad Ali Napar Advocate for applicant.

Mr.Shafi Muhammad Mahar DPG.

-

ORDER.

ZULIFQAR ALI SANGI, J:- Through this application, applicant/accused Abdul Razak Kalhoro seeks post arrest bail in Crime No. 08/2024 PS Tando Masti Khan, District Khairpur u/s 9(c) CNS Act in Challan 9(c) & 15 CNS Act, wherein it was alleged that applicant and co-accused Basit Ali were arrested while travelling in Cultus Car and 11000 Grams hemp was recovered. The bail plea of the present applicant is vehemently opposed by the learned DPG.

2. Heard arguments and perused the record. Perusal of the record reflects that the earlier bail application of applicant and co-accused Basit Ali was filed and same was rejected vide order dated 30.01.2024. Subsequently, co-accused Basil Ali was declared as juvenile and on that ground he repeated bail application, which was granted by the learned trial Court vide order dated 13.03.2024 alongwith other grounds, which are that the complainant and the mashirs are police officials, therefore question of tampering with the prosecution evidence, does not arise and there is no criminal record against him. The perusal of Sindh Amendment Act, 2022 reflects that the punishment is provided for the alleged offence upto 14 years and shall not less than 07 years. It is a settled principle of law that while deciding the bail application the lesser punishment is to be considered. In Shehzore and another's case 2006 YLR 3167 while considering the lesser sentence of the offence this Court granted bail to the accused. The offence for which

applicant is allegedly involved provided lesser sentence not less than 07 years which even does not fall within the prohibitory clause of section 497 Cr.P.C and grant of bail in these cases is right while refusal is an exception as has been held by Supreme Court of Pakistan in cases of **Tarique Bashir v. The State (PLD 1995 SC 34)**, **Zafar Iqbal v. Muhammad Anwar and others (2009 SCMR 1488)**, **Muhammad Tanveer v. The State (PLD 2017 SC 733)** and **Shaikh Abdul Rehman v. The State etc. (2021 SCMR 822)**.

3. The Supreme Court in case of **Muhammad Imran v. The State and others (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 of his previous criminal record or the desperate manner in which he has prima facie acted in the commission of offence alleged. Further Supreme Court held in the said order that the prosecution has to show if the case of the petitioner falls within any of these exception on the basis of the material available on the record. In the case in hand the prosecution has failed to establish any of the above ground meriting denial of the application of the applicant. It is also settled by the Apex Courts 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

4. Resultantly, this bail application is allowed and applicant Abdul Razak s/o Ali Hassan Kalhoro is granted bail subject to his furnishing solvent surety in the sum of Rs.100,000/- and P.R Bond in the like amount to the satisfaction of trial Court.

CrI.B.A.No. S – 178 of 2024 stands disposed of in above terms.

JUDGE

Akber.

