

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

Criminal Bail Application No.S-1242 of 2024

DATE ORDER WITH SIGNATURE OF JUDGE

20.01.2025

M/s Aijaz Ahmed Shaikh and Kamran Baig advocate for applicant.
Ms. Sana Memon, Assistant Prosecutor General along with SIP Maqsood Shah PS Cantonment Hyderabad.

ZULFIQAR ALI SANGI, J.- Investigating Officer SIP Maqsood Shah PS Cantonment Hyderabad has filed his reply to the Show Cause Notice which is found satisfactory, as such, Show Cause Notice is vacated.

2. Applicant Pir Bux seeks post-arrest bail in Crime No.130/2024 registered at P.S. Cantonment Hyderabad U/s 9(i)3(C) CNS Amended Act 2022. Earlier his application for the same relief was declined by the Court of Sessions Judge/Special Judge (CNSA), Hyderabad vide Order dated 08.11.2024.

3. Brief facts of the case are that on 03.11.2024 complainant being posted at police station Cantonment Hyderabad was on patrolling along with his subordinate staff in the area and arrested the applicant from road near Tamboora Chowk and recovered from his possession 2000 grams of charas. Such FIR was lodged against the applicant.

4. Learned counsel submits that the applicant has been falsely implicated in this case at the instance of Provincial Minister Mr. Zia Lanjar; that one Ismail Dhari, former Special Assistant of Chief Minister, expressed his view on Social Media and used un-parliamentary language against said Minister prior to alleged instant crime and such clip of Ismail Dahri was became viral in social media; that applicant made Tik Tok clip and in that Tik Tok one another employee of TUC shop acted and that such clip became viral; that no video recording was made by Complainant/IO and PWs in respect of alleged offence which is clear violation of observation of Honourable Supreme Court; that all the witnesses are police officials in spite of the fact that the place of incident was thickly populated area; that the alleged recovery of 2000 grams of charas is foisted upon the applicant. Learned counsel lastly submits that in the similar circumstances, the Hon'ble Supreme Court has granted bail to accused from whom 1833 grams of charas was recovered. In support of his arguments he relied upon the case of Zahid Sarfaraz Gill v. The State (2024 SCMR 934).

5. Learned APG submits that chemical report confirms that the seized substance was narcotic charas and the total quantity is 2000 grams, which as per the Table in Section 9(1) of the Control of Narcotic Substances Act, 1997 comes under clause (c) of its third category and prescribes a minimum imprisonment of nine years and a maximum of fourteen years, and fine. Learned APG further states that the Applicant was caught red handed by the police at public place and the case against him is fully established; therefore, he is not entitled for grant of bail.

6. I have heard learned counsel for the applicant, learned APG and perused the material available on record.

7. On perusal of material available on record, it appears that all the prosecution witnesses are police officials and no independent witness has been cited in spite of the fact that the place of incident was thickly populated area and further the complainant has not recorded the movie or captured the pictures when search, seizure and / or arrest was made as observed by Honourable Supreme Court in the cited case. The Hon'ble Supreme Court in the cited case has made certain observations which were necessitated by the facts of narcotic substance cases which are reproduced as under :-

“ 5. We are aware that section 25 of the Act excludes the applicability of section 103 of the Code of Criminal Procedure, 1898 which requires two or more respectable inhabitants of the locality to be associated when search is made. However, we fail to understand why the police and members of the Anti-Narcotics Force ('ANF') do not record or photograph when search, seizure and / or arrest is made. Article 164 of the Qanun-e-Shahadat, 1984 specifically permits the use of any evidence that may have become available because of modern devices or techniques, and its Article 165 overrides all other laws.

6. In narcotic cases the prosecution witnesses usually are ANF personnel or policemen who surely would have a cell phone with an inbuilt camera. In respect of those arrested with narcotic substances generally there are only a few witnesses, and most, if not all, are government servants. However, trials are unnecessarily delayed, and resultantly the accused seek bail first in the trial court which if not granted to them is then filed in the High Court and there too if it is declined, petitions seeking bail are then filed in this Court. If the police and ANF were to use their mobile phone cameras to record and / or take photographs of the search, seizure and arrest, it would be useful evidence to establish the presence of the accused at the crime scene, the possession by the accused of the narcotic substances, the search and its seizure. It may also prevent false allegations being leveled against ANF/ police that the narcotic substance was foisted upon them for some ulterior motives.

7. Those selling narcotic substances make their buyers addicts, destroy their state of mind, health and productivity, and adversely affect the lives of their family members. The very fabric of society is damaged. ANF and the Police forces are paid out of the public exchequer. It is incumbent upon

them to stem this societal ill. The Prosecution services, paid out of the public exchequer, is also not advising the ANF / police to be do this simple act of making a recording and / or taking photographs as stated above.

8. A consequence of poor investigation, not supported by evidence adversely affects the cases of the prosecution. The courts, which too are sustained by the public exchequer, are burdened with having to attend bail applications because the commencement and conclusion of the trial is delayed. It is time that all institutions act professionally and use all available lawful means to obtain evidence. A credible prosecution and adjudication process also improves public perception. We expect that all concerned will attend to these matters with the attention that they demand, because the menace of narcotic substances in society has far reaching consequences: by destroying entire households, creating societal problems and casting a heavy financial burden on the State when drug addicts are required to be treated. Moreover, research indicates that drugs addicts resort to all methods to obtain drugs, including committing crimes.”

8. The applicant directly alleged that he was made victim of viral of one Tik Tok and named some influential which allegation when kept in juxtaposition with the alleged recovery in which all the PWs are officials then some care is required to believe the version of prosecution which could only be possible when the evidence is recorded. Further, the complainant violated the observation made by Supreme Court in the case of Zahid Sarfaraz Gill supra and its non-compliance makes the case of the applicant one of further inquiry, entitling the applicant for grant of post-arrest bail. Resultantly, this bail application is allowed and the applicant is admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs. 100,000/- and PR bond in the like amount to the satisfaction of Trial Court.

JUDGE

Ali Haider