

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Application No. 1521 of 2024

<i>Date</i>	<i>Order with signature of Judge</i>
Applicant Karam Hussain son of Hussain Ali	: through Mr. Zakir Hussain Bughio, Advocate.
The State	: Through Ms. Rubina Qadir, Deputy Prosecutor General, Sindh
Date of hearing	: 07.08.2024
Date of order	: 07.08.2024

ORDER

Muhammad Saleem Jessar, J:- Through this bail application, applicant Karam Hussain seeks his release on post arrest bail in Crime No.28 of 2024 of P.S Garho, District Thatta, under Section 9(i), 3-C of CNS, Act, 2022. The applicant had filed two post arrest bail applications before the trial Court, but his request was turned down by way of orders dated 06.06.2024 and 20.06.2024 respectively. Hence, this application has been maintained.

2. The crux of the prosecution case as unfolded under the FIR, are that police party headed by ASI Rab Nawaz Panhwar of P.S Garho, District Thatta, was on patrolling along with his subordinates and found a suspicious person standing at the road having a black plastic shopper in his hand, who by seeing the police party, attempted to flee away but was apprehended by the police observing him to be suspicious. Upon taking him as well as shopper into custody, he was inquired about his whereabouts, who disclosed himself to be present applicant. The plastic shopper was unfolded, which was containing two big and a small pieces of charas having golden colour wrapped in plastic shopper and the words "APPLE 2022-2023" were scripted over the charas. The contraband was got weighed which became 1100 grams. On body search of the applicant, police secured three denomination notes of Rs.100/- total. Rs.300/-.

Entire contraband was sealed for laboratory examination. The complainant by citing his subordinates namely PC Ghulam Nabi and PC Ali Hassan as attesting witnesses, handed down memo of arrest and recovery. Later, they returned to P.S where instant case was registered against the applicant on behalf of the state.

3. Learned counsel contends that case against the applicant is false and is result of non-payment of bribe to the police. He argues that on 27.04.2024, one SIP Imdad Hussain Panhwar of P.S Garho had arrested the applicant as well as his son namely Irfan Ali in connection with other crime bearing No.21 of 2024 registered with P.S Gharo, for offences under Section 302, 392 & 34 PPC; however, the applicant was released under Section 169 Cr.P.C while his son, who was nominated in said FIR, was shown arrested. He further submits that though the applicant was nominated in captioned FIR and subsequently was released by the I.O but the I.O as well as present complainant had made a demand of illegal gratification against release of the applicant. The applicant being a poor fellow could not grease palms of the complainant party; hence, his brother namely Saqib filed Habeas Corpus Application No.76 of 2024 before the Court of learned Sessions Judge, Thatta on 29.05.2024; that pursuant to said application, learned Sessions Judge directed the 1st Civil Judge & Judicial Magistrate, Thatta to conduct a raid upon PS Garho; however, raid so conducted on 29.05.2024 was failed as the police had shifted custody of the applicant to some unknown destination; hence, Habeas Corpus Application filed by brother of the applicant was disposed of on 30.05.2024; that after disposal of the application, police have shown arrested applicant in this crime by foisting alleged contraband He, therefore, submits that nothing was secured, as shown by the police, hence, case against applicant requires further inquiry. In support of his contention, learned counsel places on record a true copy of memo of Habeas Corpus Application No.76 of 2024 along with Raid Report dated 30.05.2024, Police Report/CRO and certified copy of order dated 30.05.2024 passed by IInd Addl. Sessions Judge, Thatta, taken on record.

4. On the other hand, learned Deputy P.G, Sindh appearing for the state, opposes the bail application on the ground that offence with which applicant has been charged, carries punishment of 14 years and therefore,

he is not entitled for the bail. She; however, could not controvert the fact that applicant was under wrongful confinement of the police and such application filed by his brother was brought on record, yet same has not been considered by the Court below.

5. **Heard arguments, record perused.** No doubt, the applicant has been shown arrested by the police along with alleged contraband; however, documents adduced by the applicant with instant application showing his wrongful confinement at the hands of police right from 27.04.2024, has not been denied by the police or even discussed by the Court below while declining bail plea of the applicant. I have gone through the material placed with case file. It is very strange that applicant, as reported, was taken away by the police of same P.S on 27.04.2024 in connection with investigation of other crime and he remained under their illegal custody up to 30.05.2024. During intervening period, brother of the applicant filed Habeas Corpus Application before the Court of Sessions and consequent upon orders passed by the Court of Sessions, Magistrate conducted a raid though it was failed yet question of his missing as well as remaining under wrongful confinement of the police, remained accrued. After disposal of the Habeas Corpus Application, police shown him arrested on 01.06.2024 along with alleged contraband, which is beyond imagination that person was taken away by the police and kept him under wrongful confinement for more than a month and after disposal of the application filed by in-laws of the applicant, they have shown him surfaced along with contraband without explanation forthcoming from the prosecution side. The conduct of the police in discharging their duty(ies) casts serious doubts on the veracity of the prosecution evidence. At any rate, above factors create a reasonable suspicion which entitles the applicant to the concession of post arrest bail.

6. The punishment provided by law for the offences as per quantity so recovered, is not less than nine years and not more than fourteen years. It is well settled dictum of law, when the statute provides two punishments then lesser quantum of sentence should be considered particularly at bail stage. The lesser quantum of sentence is nine years which does not exceed the limit of prohibitory clause of section 497(i) Cr.P.C. Reliance can be placed upon the cases of JAMAL-UD-DIN alias ZUBAIR KHAN Versus

THE STATE vide 2012 SCMR 573 and case of ZAHID SARFARAZ GILL Versus THE STATE vide PLJ 2024 SC (Cr.C) 8.

7. Since in instant case, documentary evidence has been brought on record and it is strange that Courts below who dealt with such matters, have not considered such strong plea raised by the accused. It is also settled principle of law that every accused would be presumed to be blue eyed boy of the 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.

8. In view of what has been discussed hereinabove, I feel that a case of further inquiry within meaning of subsection (2) to section 497 Cr.P.C is made out. Consequently, instant bail application is hereby allowed. Applicant **Karam Hussain son of Hussain Ali** shall be released on bail subject to furnishing his solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousands Only) and PR Bond in the like amount to the satisfaction of learned trial Court.

9. It may be pertinent to mention here that the observation(s) made hereinabove is/are tentative in nature and shall not prejudice the case of either party during trial. However, if the applicant is found misusing the concession of bail, learned trial Court may proceed against him.

JUDGE

Zulfiqar/P.A