

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Criminal Bail Application No. 540 of 2024

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<i>Date</i>	<i>Order with signature of Judge</i>
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Applicant Shamshad son of Yar Muhammad Ghangro : through Ms. Rizwana Jabeen Siddique, Advocate.

The State : Through Syed Sardar Ali Shah Addl. Prosecutor General, Sindh

Date of hearing : 25.11.2024

O R D E R

Muhammad Saleem Jessar, J:- Through this bail application, applicant Shamshad son of Yar Muhammad Ghangro, seeks his release on post arrest bail in Crime No. 197/2024 of Police Station Kandiaro, under Section 9(c) of Control of Narcotic Substances (Amendment ) Act, 2022. The applicant had filed post arrest bail application before the trial Court/Special Court CNS Naushehroferoze , but his request was turned down by way of order dated 31.07.2024. Hence, this application has been maintained.

2. The crux of the prosecution case as unfolded in the FIR are that on 29.07.2024 at about 0750 hours, applicant / accused was arrested by ASI Abdul Ghaffar Metlo of Police Station Kandiaro, on being found in possession of 1100 grams of charas, for which he was booked in the aforesaid FIR.

3. Ms. Rizwana Jabeen Siddiqui, Advocate representing the applicant has contended that the recovery proceedings are in violation of section 103 Cr.P.C and the applicant has falsely been implicated by the police. She has next contended that it is a case of border line between section 9(b) and 9(c) of Control of Narcotic Substances Act, 1997 which comes within the scope of section 9(b) thereof; as such, does not fall within prohibitory clause of section 497 Cr.P.C. She has further contended that applicant is in custody and no more required for further investigation, as such the applicant is entitled for concession of bail.

4. On the other hand learned Additional Prosecutor General, Sindh has opposed the grant of bail contending that a considerable quantity of 1100 grams charas has been recovered from the possession of applicant and since the offence is against the society, therefore, it comes within exceptions for refusal under section 51(2) of the Act, 1997 read with section 497 Cr.P.C, hence the applicant is not entitled for grant of bail.

5. Heard arguments, record perused.

6. The applicant was apprehended by the police and allegedly 1100 grams Charas was recovered from his possession which marginally exceeded upper limit of section 9(b) of CNS Act, 1997 and it is case of border line between clauses (b) and (c) of section 9 of CNS Act 1997, benefit whereof could be extended to the applicant at the bail stage. In this regard I am fortified by the case law reported as, *Sheeren Muhammad v. The State* (2006 P.Cr.L.J 726), *Mehboob Ali v. the State* (2007 YLR 2968), and *Ayaz v. The State* (2011 P.Cr.LJ 177). Further all the witnesses of the incident are police officials and none from the public has been cited as witness and the offence does not fall within the ambit of prohibitory clause of section 497 Cr.P.C. It is settled principle of law that the bail in cases which do not fall within prohibitory clause of Section 497 is right and its refusal will be an exception. Moreover, the applicant is in custody since 04.05.2024 and police have submitted challan; hence, his physical custody is not required by the police for further investigation or interrogation.

7. Section 9 (1) of the Act provides punishment with imprisonment up to fourteen years and not less than nine years for possessing, importing or exporting and trafficking 'charas' in contravention of Section 6, 7 and 8 of the Act for more than 1000 grams and up to 4999 grams in quantity. At the stage of bail, the lesser of two punishments is to be taken into consideration, as the quantum of punishment could only be decided by the trial Court after recording evidence. Reference can be had from the case of *SHAHZORE Versus THE STATE* (2006 YLR 3167).

8. It is settled 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.

9. As for objection raised by learned State counsel that huge quantity was recovered from the applicant is concerned, same tantamount to deeper appreciation of the evidence, which is yet to be established by the prosecution, hence is not permissible at bail stage. From tentative assessment of material available on record as discussed above, the applicant has been able to make out a case of further inquiry. Under these circumstances, the case of the applicant falls within the scope of bail as contemplated by Section 51 (2) of the Act read with Section 497 (2) Cr.P.C and requires further inquiry.

10. On 25.11.2024, after hearing learned counsel for the parties, by a short order instant bail application was allowed and applicant Shamshad son of Yar Muhammad Ghanghro was ordered to be released on bail subject to furnishing his solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) and PR Bond in the like amount to the satisfaction of learned trial Court. Above are the reasons for said short order.

11. 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 would be competent to proceed against him as well as his surety.

*Aamir/PS*

*J U D G E*