

**THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA**

**1<sup>st</sup> Criminal Bail No.S-564 of 2024**

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Applicant: Abdul Jabbar alias Abdul Ghaffar son of Sher Muhammad Sethar through Mr. Ali Azhar Tunio, Advocate.

Complainant: The State Through Mr. Aitbar Ali Bullo, Deputy Prosecutor General, Sindh.

Date of hearing: 06.11.2024

Date of Order: 06.11.2024

**ORDER**

**ARBAB ALI HAKRO, J.**-Through instant Criminal Bail Application, applicant/accused Abdul Jabbar alias Abdul Ghaffar Sethar seeks post-arrest bail in Crime No. 102/2024, under Sections 9(1), 3(c) CNS Act and Crime No.103/2024 under section 23(1)(a) of Sindh Arms Act, 2013, both registered at Police Station City, Jacobabad. His bail pleas have been declined by learned Additional Sessions Judge-I/Model Criminal Trial Court (MCTC), Jacobabad vide separate Orders dated 18.09.2024, hence this bail application.

2. The brief facts of the case are that on 05.08.2024, complainant ASI Abdul Khaliq Solangi, along with his subordinate staff, left the police station for patrolling purposes; at about 1545 hours, they reached Eid Gah Chowk when, at about 1600 hours, they saw one white colour Civic Car bearing Registration No.AJP919, Engine No.D15Y41002866, Chassis No. NFBES86B55R131767 was coming from Quetta Road; after stopping the car, they saw one man sitting beside the driver, and in the back seat, one woman was sitting with a black colour plastic bag in her hand. On suspicion, the complainant made mashir to PC Ghulam Haider and PC Muhammad Umar and enquired about the passengers of their identity, who disclosed their names to be Abdul Jabbar, driving the car, Liaquat Ali, and Noor Bibi. On the

personal search of the male passengers, they found two patties of charas from the right side fold of the shalwar of accused Abdul Jabbar, and from the left side, they recovered one 30-bore TT Pistol along with a magazine and four bullets. On weighing the charas, each became 1000 grams of each patti, a total of 2000 grams; they separated 500 grams from each patti and sealed the same for chemical examination. On enquiry, the accused, Abdul Jabbar alias Abdul Ghaffar, disclosed that the TT pistol was unlicensed, and a separate F.I.R. under section 23(1)(a) of Sindh Arms Act 2013 was lodged against the accused. On personal search of accused Liaquat Ali, the same set of contraband was recovered. Thereafter, mashirnama was prepared at the spot, and the complainant brought the accused and the recovered charas to the police station and lodged F.I.R.

3. Learned counsel submits that the applicant/accused is innocent, and he has been falsely implicated in this case by the complainant/police with *mala fide* intention and ulterior motives; that the charas was foisted upon the applicant and the T.T pistol was licensed one and he has placed photocopy of such license, which is available on record at pages 25-41; that the place of incident is thickly populated area, but no independent witness has been cited by the complainant, and the complainant and the P.Ws are police officials. He submits that the applicant/accused has been behind bars since his arrest without any progress in the trial, and his right to a fair trial is being infringed. Therefore, he may be admitted on bail. In support of his contentions, he relied upon the case reported as ***Zahid Sarfaraz Gill v/s. The State (2024SCMR 934)*** and unreported Order dated 01.10.2024, passed by this Court in 1<sup>st</sup> Criminal Bail Application No. S-491/2024 and Order dated 01.10.2024, passed in Criminal Bail Application No.S-519 of 2024.

4. On the other hand, the learned Deputy Prosecutor General has opposed the grant of bail to the applicant/accused on the ground that he is nominated in the F.I.R. with a specific role and a massive quantity of charras has been recovered from his possession, which cannot be foisted, and it is the offence against the society, which shall not be tolerated; that no ill-will or *malafide* on the part of the complainant has been pointed out by the counsel for the applicant to falsely implicate the present applicant/accused in

the present case, therefore, the applicant/accused is not entitled to the concession of bail.

5. I have heard arguments of the learned counsel for the parties and have perused the material available on record with their able assistance, and the case law relied upon.

6. The perusal of the record reveals that the Police party, during snap checking at Eid Gah Chowk, apprehended the applicant, and 2000 grams of charas and an unlicensed pistol were allegedly recovered from his possession. It would be mentioned that the place of arrest of the applicant is the busy interception of the city, and the timing of arrest and recovery were also the buzzing hours of the day, i.e. 04:00 p.m. Yet, nobody from the public was associated as mashir. In fact, no effort was made to take someone from the place of the incident. No doubt, in the cases of narcotics, an association of mashirs from the public is not so essential, but compliance of Section 103 Cr.P.C is to ensure transparency and fairness on the part of police during the course of recovery, curb false implication and minimize the scope of foisting of fake recovery upon accused. If people from the public are easily available, it would be advisable to associate them to add sanctity to the recovery proceedings. Reliance in this regard is placed upon the case of **Lal Bux alias Lal vs The State** reported as **2023 Y L R 321** wherein it was held as under:-

*"We are conscious of the fact that provisions of section 103, Cr.P.C. are not attracted to the cases of personal search of accused in narcotic cases but where the alleged recovery was made on a street (as has happened in this case) and the peoples were available there, omission to secure independent mashirs, particularly, in police case cannot be brushed aside lightly by this Court. Prime object of Section 103 Cr.P.C is to ensure transparency and fairness on the part of police during course of recovery, curb false implication and minimize the scope of foisting of fake recovery upon accused. There is also no explanation on record why no any independent person from the vicinity has been joined to witness the recovery proceedings. No doubt police witnesses were as good as other independent witnesses and conviction could be recorded on their evidence, but their testimony should be reliable, dependable, trustworthy and confidence worthy and if such qualities were missing in their evidence, no conviction could be passed on the basis of evidence of police witnesses. But here in this case, we have also noted number of contradictions in between the evidence of prosecution witnesses which cannot be easily brushed aside. Above conduct of the police shows that investigation has been carried out in a casual and stereotype manner without making an effort to discover the actual facts/truth."*

Moreover, in the present case, it has come to light that the police officials who allegedly affected the recovery of charas and an unlicensed pistol from the applicant have failed to record any photographic or video evidence at the time of alleged recovery. It needs no mention that modern devices and techniques, such as mobile phone cameras, are readily available and expressly permitted under Article 164 of the Qanun-e-Shahadat Order, 1984. The Hon'ble Supreme Court of Pakistan, in the case of **Zahid Sarfaraz Gill vs The State**, reported as **2024 SCMR 934**, has addressed the issue of lack of recording or photographing by the police and Anti-Narcotics Force (ANF) during searches, seizures and arrests, which is reproduced as follows:-

*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 in-built 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 levelled against ANF/police that the narcotic substance was foisted upon them for some ulterior motives.*

7. The punishment provided by law for the offence, as per quantity so recovered, is not less than nine years and not more than fourteen years. Hence, when the statute provides two punishments, a lesser quantum of sentence should be considered, particularly at the 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-UDDIN 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.** The mere heinousness of crime will not disentitle an accused from concession of bail when ultimate conviction, if any, can repair the wrong caused by the mistaken relief granted to him; however, if after a lengthy trial, he/she is found innocent, then golden days of his/her life spent under incarceration cannot be repaired with. The applicant is neither a previous convict nor retains any criminal record. He is a first offender; the investigation has already been completed, and his further incarceration would have served no useful purpose.

8. It is a settled principle of law that while deciding the bail plea of the accused, a deeper appreciation of evidence is not permissible, and the material is to be assessed tentatively. From the tentative assessment of material available on record, as discussed above, the applicant has been able to make out a case for further inquiry into his guilt. Resultantly, both these bail applications are allowed, and the applicant is granted post-arrest bail subject to his furnishing solvent surety in the sum of Rs. 100,000/- (Rupees One Hundred Thousands only) in each case and PR Bond in the like amount to the satisfaction of the trial court.

9. Needless to mention, the observations made hereinabove are tentative in nature and would not influence the learned Trial Court while deciding the case of either party at trial.

10. It is clarified that if the applicant misuses the concession of bail or repeats the offence, the prosecution may file an application for cancellation of bail in accordance with law.

**J U D G E**