

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.

Crl. Bail Appln. No.S- 608 of 2024

Applicant : Shafi Muhammad Dool, through Mr. Asif Ali Abdul Razak Soomro, Advocate.

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

Date of hearing : 06.11.2024.

Date of Order : 06.11.2024.

ORDER

ARBAB ALI HAKRO, J.- This is a post-arrest bail application filed by the applicant Shafi Muhammad son of Muhammad Ameen Dool in Crime No.101/2024 registered at Police Station Karampur, District Kashmore at Kandhkot, for an offense punishable under section 9(c) CNS Act, 1997, after the dismissal of his application by the learned Sessions Judge/ Special Judge CNS, Kashmore at Kandhkot, vide order dated 28.09.2024.

2. Facts of the prosecution case, in brief, are that on 16.08.2024, a police posse led by complainant ASI Abdul Rasheed Bozdar of PS Karampur while on patrol duty, on a tip-off, impounded a tractor with trolley driven by applicant/accused Shafi Muhammad Dool at Bhagio Diversion situated on the link road leading from Karampur to Diyani village, secured a black color shopper from the tool box of the trolley, which contained charas weighing 1100 grams; besides recovery of a currency note of Rs.500/- and qwerty mobile phone from the personal search of the accused. After preparation of the memo of arrest and recovery with the signatures of official mashirs, the accused along with recovered Chars and tractor trolley were brought to the Police Station where F.I.R under section 9 (c) of CNS Act, was registered on behalf of the State.

3. Learned counsel for the applicant contends that the applicant is innocent and he has been falsely implicated by the police; that all the witnesses are police personnel and sub-ordinates of the complainant hence false implication of the applicant cannot be ruled out; that the applicant was actually apprehended along with his tractor trolley loaded with 150 mounds of wood by PC Abdul Hakeem Jatoy and 02 other police officials of PS Karampur on 15.8.2024, at 5.00 p.m., hence, an application u/s 22-A & B, Cr.PC was filed by

his relative, namely, Hafiz Nazar Muhammad before the learned Sessions Judge/Justice of Peace, Kashmore at Kandhkot, seeking registration of FIR; that the alleged recovery was made on 16.8.2024 and it was to the laboratory on 21.08.2024 i.e. with the delay of 05 days and it was received in the laboratory on 23.8.2024, there is absolutely no explanation for the delay so occurred. Learned counsel further contended that the quantity of recovery of alleged contraband is falling within the ambit of borderline of Section 9(b) and 9(c) of the CNS Act, 1997, the offence carrying maximum punishment of 05 years does not attract the prohibition contained in Section 51 of the CNS Act, 1997; neither photographs nor video recording of the seizure and arrest were made, therefore, such aspect of the case comes within the scope of further inquiry; the case has been challaned and the applicant is not required to police for any further investigation. Under these circumstances, learned counsel prays the applicant may be enlarged on bail.

4. On the other hand, Learned DPG vehemently opposed the grant of bail on the ground that the chemical report dated 9.9.2024 is positive and the applicant has not shown any *mala fide* on the part of the police, hence he does not deserve the concession of post-arrest bail in Narcotic Case.

5. I have heard the learned counsel for the parties and gone through the material placed on record.

6. The perusal of record shows that 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. It is a case of the borderline between clauses (b) and (c) of section 9 of the Control of Narcotic Substances Act 1997. The Hon'ble Supreme Court of Pakistan, in the case of **Aya Khan and another v. The State (2020 SCMR 350)**, allowed bail to an accused on the basis of the case being borderline. Reliance is also placed upon the case of **Saeed Ahmed v. The State and others (PLJ 2018 SC 812)**, wherein bail was allowed to an accused from whose possession 1350 grams substance recovered that marginally exceeds 1 K.G. Further, the contents of F.I.R reveal that complainant ASI Abdul Rasheed Bozdar of Police Station Karampur district Kashmore @ Kandhkot despite having prior information, did not inform his higher authorities and went for search and recovery, which act of such a police officer is in violation of section 21 of Control of Narcotic Substances Act, 1997 and this Court in case of **Imadad Ali Junejo v. The State (2002 PCr.LJ 1086)** had quashed the

proceedings in the case of recovery of narcotic substance. Besides, 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. 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 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. Moreover, the police also failed record video and/or take photographs of the recovery proceedings inasmuch as, Article 164 of the Qanun-e-Shahadat Order, 1984 specifically permits use to modern devices or techniques. Reliance in this regard is respectfully placed on the case of *Zahid Sarfaraz Gill v. The State (2024 SCMR 934)*. Further, the filing of application u/s 22-A & B, Cr.PC by Hafiz Nazar Muhammad, a relative of the applicant, before the learned Sessions Judge/Justice of Peace, Kashmore at Kandhkot, seeking registration of FIR against the police officials of PS Karampur regarding apprehending the applicant along with his tractor trolley loaded with 150 mounds of wood on 15.8.2024 also smacks of some malafide on the part of police of PS Karampur; hence, this appears to be a fit case of further enquiry within the meaning of subsection (2) of Section 497 Cr.P.C.

7. For the foregoing reasons, instant bail application is allowed and the applicant is directed to be released on bail, on 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.

8. The above observations are tentative in nature, which shall not influence the trial Court, in any manner, while dealing with trial of the case.

Judge