

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

1st Cr. Bail Application No.S-685 of 2024

Applicant: Zahid Hussain Laghari, through M/s
Habibullah G. Ghouri and Muhammad Afzal
Jagirani, Advocates.

The State: Through Mr. Aitbar Ali Bullo, DPG.

Date of hearing: 26.02.2025.

Date of order: 26.02.2025.

ORDER

Khalid Hussain Shahani, J.- Applicant Zahid Hussain Laghari seeks post-arrest bail in Crime No.151 of 2024 registered at P.S Hyderi, Larkana, for an offense under Section 9(3)(c) of CNS, Act, 1997, following the dismissal of his post-arrest bail application by the learned Sessions/Special Judge CNSA, Larkana, vide order dated 28.10.2024.

2. As per prosecution theory, on 05.09.2024, at about 1500 hours, a police party of Hyderi Police Station, headed by complainant, ASI Muhammad Ilyas Soomro, was conducting a routine patrol when they observed the applicant in possession of a black-colored plastic bag at Luhur Colony near drainage disposal (Kinna Khooh). Upon noticing the police officials, the applicant, who was on foot, attempted to flee but was subsequently apprehended. Upon search, the plastic bag was found containing 11 pieces of charas weighing 3100 grams, which was immediately sealed on the spot in accordance with legal procedures. Additionally, two currency notes of Rs. 100 each, totaling Rs. 200, were recovered from his possession. Consequent upon; case was registered inter alia on above facts.

3. Heard learned Counsel for the applicant, learned DPG for the State, and perused the record.

4. Learned Counsel for the applicant contended that the applicant has been wrongfully implicated in the instant case by the police; that the applicant was, in fact, apprehended on 04.09.2024, at approximately noon, from his residence in OPF Colony, Larkana, and the alleged recovery of charas has been falsely attributed to him; that despite the purported recovery taking place in a densely populated and highly trafficked area, no independent witness was associated with the proceedings by the police to corroborate the recovery; that the

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contraband samples were forwarded for forensic analysis four days after the alleged recovery, raising concerns regarding procedural lapses; that no photographic or video evidence was recorded at the time of the alleged seizure and arrest, thereby necessitating further inquiry into the legitimacy of the charges; that the case has already been submitted for trial (challaned), and the applicant is no longer required for custodial interrogation. In support of these arguments, the learned Counsel relied upon the precedent set in *Zahid Sarfaraz Gill v. The State* (2024 SCMR 934).

5. Conversely, the Learned Deputy Prosecutor General (DPG) strongly opposed the bail application, contending that the applicant was caught in flagrante delicto while being in possession of 3100 grams of charas. The DPG further asserted that the chemical examiner's report has confirmed the presence of contraband, and no mala fide intention or procedural impropriety on the part of the police has been demonstrated to suggest that the alleged recovery was falsely attributed to the applicant.

6. The present case pertains to the alleged recovery of 3100 grams of charas from the applicant on 05.09.2024; however, the samples were dispatched for chemical analysis on 09.09.2024 and received at the forensic laboratory on the same date, which exceeds the prescribed period of 72 hours. No justification has been provided for this delay in the submission of the samples. Furthermore, as per the prosecution's claim, 11 pieces of charas weighing 3100 grams were recovered from the accused; however, the Chemical Examiner's report dated 02.09.2024, issued by the Chemical Laboratory Sukkur @ Rohri, reflects the presence of 12 pieces of charas and records a gross weight of 3105 grams, with a net weight of 3075 grams, despite only 10 grams being utilized for testing.

7. Glance on the Chemical Examiner's findings indicate that the charas was hard, signifying that it had undergone physical and chemical alterations over time due to oxidation, drying, or compression. This suggests prolonged storage or exposure to environmental conditions that resulted in the hardening of the resin and a reduction in its psychoactive properties, as tetrahydrocannabinol (THC) degrades into cannabinol (CBN) over time. Elevated CBN levels are an indication that the contraband is old.

8. Given these circumstances, I find merit in the arguments put forth by learned Counsel for the applicant that the actual evidentiary value of the seized contraband is yet to be established at trial and that the possibility of foisting



cannot be ruled out. Furthermore, the police failed to document the search, seizure, and arrest through video recordings or photographic evidence, as highlighted by the Hon'ble Supreme Court in Zahid Sarfaraz Gill (supra), which was cited by the applicant's counsel. The applicant has been incarcerated since the date of his arrest.

9. Section 9(1) of the Act prescribes imprisonment of up to fourteen years, but not less than nine years, for possession, import, export, or trafficking of charas exceeding 1000 grams but not more than 4999 grams, in violation of Sections 6, 7, and 8 of the Act. It is a well-established principle of law that at the bail stage, the possibility of a lesser sentence must be considered. The actual quantum of punishment can only be determined by the trial Court upon evaluation of evidence from both parties. Additionally, no prior criminal record has been presented to suggest that the applicant has been previously involved in a similar offense. Given these factors, I am of the considered view that the case against the applicant falls within the purview of further inquiry as contemplated under Section 51(2) of the Act, read with Section 497(2) Cr.P.C.

10. For the foregoing reasons, the instant bail application is allowed. Applicant Zahid Hussain Laghari shall be released on bail subject to furnishing his solvent surety in the sum of Rs. 200,000/- (Rupees two hundred thousand only) and P.R. Bond in the like amount to the satisfaction of the learned trial Court.

11. The above observations are tentative in nature and shall not prejudice the case of either party at trial.



Certified to be True Copy

Assistant Registrar

Sd/
(Zahid Hussain Laghari)
Judge