

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Crl. Bail Appln. No.9-246 of 2024.

DATE  
OF HEARING

ORDER WITH SIGNATURE OF HON'BLE JUDGE

1. For orders on office objection 'A'.
2. For hearing of bail application.

27.06.2024.

Mr. Rafique Ahmed K. Abro, advocate for the applicant.

Mr. Ali Anwar Kandhro, Addl. P.G.

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**MEHMOOD A. KHAN, J-** Applicant Muhammad son of Muhammad Mithal, seeks post arrest bail in Crime No.22/2024, registered at Police Station Qubo Saeed Khan (District Kamber-Shahdadkot) for offence punishable under section 9(d) CNSA, 1997.

2. The facts of the prosecution case in nutshell are that on 04.04.2024 at 1600 hours, accused Muhammad was arrested near Arz Muhammad Rice Mill Qubo Saeed Khan by the Police Party of Police Station Qubo Saeed Khan headed by ASI Syed Hassan Ali Shah. The accused was found in possession of 32 Kgs hemp, in presence of mashirs PC Mahi Khan and PC Bakhshal, while he was going on bike.

3. Learned counsel for the applicant contends that the applicant/accused is innocent and he has falsely been involved in this case; that the alleged incident said to have taken place in thickly populated area but no independent person of locality has been cited as mashir/witness, hence false implication of the applicant cannot be ruled out; that as per contents of FIR the Bhang/hemp was lying on back seat of the applicant on bike but is humanely impossible to take such huge hemp without any support of other person; but the recovery memo is in contradiction to the allegation. The alleged contraband substance was sent after much delay without any explanation and that

the entries for establishing safe custody are absent; that the alleged offence does not fall within the prohibitory clause of section 497, Cr.P.C; that case of present applicant requires further enquiry in terms of Section 497 (2), Cr.P.C and he is entitled for grant of bail.

4. On the other hand learned Addl. P.G contends that huge quantity of Bhang of 32 Kgs have been recovered from the accused/applicant, therefore, in any manner, he is not entitled for the concession of bail as according to the present law after amendment the offences carries a punishment of more than ten years.

5. Heard learned counsel for the applicant, learned Addl. P.G and perused the material available on record.

6. Admittedly, the applicant was apprehended at bright hours of the day i.e. 04:00 p.m, near Arz Muhammad Sheller situated Qubo Saeed Khan city, which is a thickly populated area. Even the place of receiving information i.e. Benazir Chowk Qubo Saeed Khan, is also a busy place, where presence of private persons at the time of alleged recovery from the possession of applicant cannot be disputed, but in spite of that no private person was associated or picked by the complainant to witness the alleged recovery. No doubt the police personnel are as good witnesses as anyone from the public, but when the recovery is made at a thickly populated place and a person is going to be charged for an offence which carries an extreme heavy punishment then it is incumbent upon police to associate independent persons of the locality. All the P.Ws are police officials and, therefore, question of applicant's tampering with the prosecution evidence does not arise. Furthermore, perusal of police papers reveals that the said hemp which was allegedly recovered from the applicant/accused has been sent to Chemical Laboratory for examination with the delay of four days and explanation to that effect has not been furnished by the

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prosecution for such inordinate delay in sending the same. Learned Addl. P. G was called upon in respect of any criminal record of the applicant to which he responded that none was present.

7. In the light of above facts and circumstances, the case against the applicant in my considered view requires further enquiry as provided under subsection (2) to Section 497, Cr.P.C. Accordingly, instant bail application is allowed. The applicant shall be released on bail subject to his furnishing solvent surety in the sum of Rs.300,000/- and P.R bond in the like amount to the satisfaction of learned trial Court.

8. Needless to mention here that the observations made herein-above are tentative in nature, which shall not prejudice the case of either party at trial.

  
Judge

M.Y.Panhwar/ \*\*