

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Bail Application No.S-1118 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on office objections.

2. For hearing of main case.

17.11.2022.

Mr. Altaf Hussain Chandio, Advocate for applicant.

Ms. Sana Memon, Assistant P.G.

ORDER

Muhammad Saleem Jessar, J. - Through this application, applicant Ghulam Mustafa @ Mustu S/o Muhammad Qasim Brohi seeks his admission on post arrest bail in Crime No.160 of 2022, registered at Police Station B-Section, Nawabshah District Shaheed Benazirabad for offence under Section 9(c) of CNS Act, 1997. Earlier, the bail plea raised by applicant before first forum has been declined by Court of learned Ist Additional Sessions Judge / Model Criminal Trial Court, Shaheed Benazirabad vide impugned order dated 18.10.2022 passed in Cr. Bail Application No.1519 of 2022.

2. Since the facts of prosecution case are already mentioned in F.I.R as well impugned order passed by learned Ist Additional Sessions Judge, Shaheed Benazirabad; therefore, there is no need to reproduce the same in order to save precious time of the Court.

3. Learned Counsel for applicant submits that though per FIR the applicant was found in possession of 1180 grams of chars; however, chemical report (available at Page-43 of Court file) reveals that net weight of the contraband is 880 grams. He; therefore, submits that the quantity as per chemical report dated 07.10.2022 would fall under Section 9(b) of CNS Act, 1997, which carries two punishments; hence, by considering the lesser punishment the applicant may be enlarged on bail. In support of his arguments, learned Counsel has cited the case of AYA KHAN and another v. The STATE (2020 SCMR 350).

4. Learned Assistant P.G opposed the bail; however, she could not controvert the fact that there is contradiction between the quantity of contraband mentioned in the FIR as well report.

5. Heard arguments and perused the record.

6. Per FIR, the police party headed by SIP Ghulam Muhammad Jamali apprehended the applicant on 24.09.2021 and on his bodily search secured 1180 grams of chars as well Rs.320/-. To such effect, present FIR was lodged. During investigation, the entire quantity of contraband viz. 1180 grams was sent to Laboratory for its examination. Per chemical / analysis report issued by Chemical Examiner, Chemical Laboratory, Sukkur at Rohri dated 07.10.2022, the gross weight of chars has been shown as 905 grams and net weight as 880 grams. Per new enactment, vide Act No.XX of 2022 promulgated on 06.09.2022, the punishment provided for keeping 500 grams to 999 grams of chars is 09 years and shall not be less than 05 years with fine. Therefore, the case in hand, in view of new enactment would fall under Section 9(b) of CNS Act, 1997 as per Amendment of 2022. Moreover, the law provides two punishments. It is well settled principle of law that if the statute provides two punishments then the lesser quantum of the sentence / punishment is to be considered at bail stage. In case of AYA KHAN and another v. The STATE (2020 SCMR 350) the Hon'ble Supreme Court of Pakistan while dealing with identical issue has held in Para-3 of the order as under:-

“3. Without discussing the merits of the case lest it prejudice the case of one or the other side, suffice it to say that in the FIR or in the recovery memo, no where it is stated that whether it was net or gross weight of the narcotics and in this eventuality it becomes a border line case between subsections (b) and (c) of section 9, C.N.S.A., 1997. Thus the benefit of doubt in this aspect shall go to the accused. In view of the principle of law laid down in the case of Manzoor and 4 others v. The State (PLD 1972 SC 81).”

7. Accordingly and in view of above legal position, instant application is hereby allowed. Consequently, applicant Ghulam Mustafa @ Mustu is admitted to bail subject to his furnishing solvent surety in the sum of Rs.100,000/- (Rupees One Hundred Thousand) and P.R bond in the like amount to the satisfaction of learned trial Court.

8. It is 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.

JUDGE

