

**IN THE HIGH COURT OF SINDH CIRCUIT COURT
HYDERABAD**

Cr. Bail Application No.S- 1369 of 2022

Ahmed Ali s/o Muhammad Ali

Vs.

The State

Date of hearing:	06.02.2023
Date of Order	06.02.2023
Applicant:	Through Mr. Shabeer Hussain Memon, Advocate.
State:	Through Ms. Sana Memon, Asst. P.G Sindh.

ORDER

Mohammad Karim Khan Agha J: The applicant / accused namely, Ahmed Ali s/o Muhammad Ali through the above bail application has sought post arrest bail in F.I.R. No.336 of 2022 registered under Section 9-C CNS Act, 1997 amendment 9-1(3)C 2020 at Police Station Kotri District Jamshoro.

2. Brief facts as narrated in the F.I.R., are that on 07.12.2022 at 1720 hours the complainant along with his subordinate staff left PS for patrolling. After patrolling at different places when at about 1800 hours they reached near Haddi-Mill Graveyard, they saw in the electricity bulb light as well as head lights of the vehicle that one person having black colour shopper in his hand, who on seeing the police vehicle started running towards graveyard. They got down from the vehicle, encircled and apprehended him along with black colour shopper. The shopper was taken into police possession, it was checked and found three big pieces of charas and one small piece of charas was lying. Charas was wrapped with golden colour plastic. His name and address were asked to which he disclosed his name as Ahmed Ali s/o Muhammad Ali Lashari Baloch, resident of Naga Line Nadi Miil Baloch colony. His personal search was conducted to which two currency notes of Rs.100/- total Rs. 200/- were

mashirs were not available as such HC Sharafuddin Khoso and HC Ayaz Ali were nominated as mashirs. The recovered charas was weighed which became 1590 grams. All the recovered charas was sealed for chemical analyses and such memo of arrest and recovery was prepared with the signature of below named mashirs in the light of bulbs and head light of vehicle. Thereafter arrested accused and property were brought at police station and since above named accused by keeping 1590 grams of charas for sale purpose have committed the offence U/S 9-C CNS Act 2022 91(3) amendment the F.I.R was registered against him.

3. In essence learned counsel for the applicant argued that the applicant was innocent, the case has been challaned the applicant is no more required for further investigation, the narcotics had been foisted on him, there were no independent mashirs and there was no material to connect him with the commission of the offense and as such for all the above reasons the applicant is entitled to post-arrest bail. In support of his contentions learned counsel placed reliance on the case of **Nasir Mahmood V The State** (2021 P.Cr.L.J 443).

4. On the other hand learned Asst. Prosecutor General, Sindh vehemently opposed the bail application and contended that there was sufficient material on record to connect the applicant to the offense for which he has been charged and as such the post-arrest bail application of the applicant should be dismissed. In support of her contentions, she placed reliance on the case of **Muhammad Noman Munir V The State** (2020 SCMR 1257).

5. I have considered the arguments of the learned counsel for the applicant and learned Asst. Prosecutor General, Sindh and perused the record and considered the relevant case law.

6. I am of the considered view that the applicant has not made out a case for post arrest bail for the reasons that the applicant's bail before the trial court has already been dismissed by a well reasoned order dated 13-12-2022 which requires no interference with; that at the bail stage only a

tentative assessment of the material is permissible and not a deep appreciation of the same and as such the question of the quantum of sample cannot be gone into consideration at this stage as it requires a deeper appreciation of the evidence; that the F.I.R was lodged without any delay; that the applicant was arrested on the spot from whom 1590 grams charas was recovered by police officials who had apparently no enmity or ill will against him; that the chemical report has proved positive; that as per F.I.R no independent person was prepared to act as mashir and in any event Section 103 Cr.P.C is excluded from the CNS Act; that Section 51 of the CNS Act, 1997 also makes it clear that bail is very restrictive in the matter of CNS, which is a most serious crime against society and the fact that the matter was investigated by an ASI is an irregularity and not an illegality and even otherwise minor technicalities are to be ignored in narcotic cases.

7. Based on the above facts and circumstances, I find that there is sufficient evidence on record to connect the applicant with the commission of the offence. Reliance is placed on the case of **Muhammad Nauman Munir** (supra). As such for the above reasons the applicant's application for post-arrest bail is dismissed.

8. However, I note that the applicant has been in custody for around 2 months and that the charge has not as yet been framed against him and there are only 3 PW's in this case and as such I direct the trial court to decide this matter within six (06) months of the date of this order. The office is directed to immediately send a copy of this order to the concerned trial Court for compliance.

9. Needless to say that this order shall have no effect on the trial proceedings which will be decided on merit by the learned trial judge based upon the evidence placed before it.

10. The bail application stands disposed of in the above terms.