

HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Nazar Akbar

Cr. B.No.583 of 2015

Applicant: Ali Hassan, through Shaikh Jawaid Mir,
Advocate

The State: Ms. Rehana Akhtar, APG

Cr. B.No.699 of 2015

Applicants: Alam and Abdul Sattar, through Mr. Mukhtar
Ali Qureshi Advocate called absent.

The State: Ms. Rehana Akhtar, Addl. PG

Date of hearing **06.11.2015**

J U D G M E N T

NAZAR AKBAR, J. By this common order I intend to dispose of two Bail Applications i.e. Cr. Bail Application No. 583 of 2015 filed by applicant/accused Ali Hassan and Criminal Bail Application No. 699 of 2015 filed by applicant/accused Alam Chang and Abdul Sattar Chang, since all the applicants are facing trial in Crime No. 14 of 2015 registered under Section 9(c) of CNS Act, 1997 at PS Thatta. Earlier bail application moved by the applicants/accused was declined by the trial court.

The brief facts of the case are that the applicants/accused alongwith one Shahjahan were arrested by the police officials of PS Thatta during checking of vehicles at Baghar Morri road near Soomra Water where a car bearing No. BAT-985 was stopped by them for the purpose of checking. During search all the four persons sitting in the car were arrested and besides weapons of different categories police officials also found packets of charas from underneath the front seats and the back seats in all weighed 10 kilograms, therefore, the case was registered.

I have heard learned counsel for the applicants/accused and learned counsel for the state.

Counsel for the applicants/accused has mainly relied on the proposition that it was a case of further inquiry since the possession of the charas was conscious or not is to be determined at the trial. It was further contended by him that the offence does not fall within the category of prohibitory clause of section 497 Cr.P.C. He has also claimed violation of section 103 Cr.P.C. He has contended further that in such like cases

punishment up to 10 years may not be awarded by the court and therefore, it could be a case for less than ten years imprisonment and therefore the applicants/accused are entitled to bail. He has relied on the following case law:-

1. 2015 SCMR 735 (Khuda Bux vs. The State)
2. PLD 2012 SC 369 (Mst. Jameela and another vs. The State)
3. 2012 SCMR 573 (Jamal-ud-din alias Zubair Khan vs. The State)

Learned Additional Prosecutor General has strongly opposed these bail applications on the ground that the applicants/accused were arrested with not only the charas weighing 10 kilograms but also they were carrying weapons. She further contended that their case falls within the category of prohibitory clause of Section 497 Cr.P.C. and the punishment for offence under Section 9(c) of CNS Act, 1997 is not less than imprisonment for life. She further contended that quantity of 10 kilograms of charas is not supposed to be divided by four persons to bring the case of the applicants/accused within the category of offence of carrying only 2½ kilograms of charas as all the four accused were consciously carrying charas which has been recovered from the vehicle in which they were present at the time of their arrest and it is not a case of any of them that they were by chance sitting in the car.

I have examined the case law and found that case law reported in 2012 SCMR 573 in which accused was granted bail, the accused was carrying hardly 4 Kilogram of charas when he was arrested. The case law reported as PLD 2012 Supreme Court 369 and 2015 SCMR 735 are not attracted since the principle of grant of bail has not been examined by the Honourable Supreme Court in the said cases. These are cases in which the Honourable Supreme Court was seized of appeals against conviction and not appeals on refusal of bail applications.

In view of the above discussion tentatively there is sufficient material available with the prosecution to connect the applicants/accused with the offence punishable with life imprisonment and therefore, I am not inclined to grant bail in these cases. Bail applications are dismissed.

JUDGE

Karachi
Dated:18.12.2015
RAFIQ/P.A