

Order Sheet
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

Criminal Bail Application No.S-94 of 2019.

Deedar Ali son of Allah Bux Lakho ----- Applicant.

Vs.

The State ----- Respondent

Date of Decision: 08.03.2019

Mr. Muhammad Sharif M. Sial, advocate for applicant.

Mr. Shahid Ahmed Shaikh, Deputy Prosecutor General, Sindh
alongwith Inspector Nisar Ahmed Mughal complainant of the case.

ORDER

ADNAN-UL-KARIM MEMON, J: - The Applicant namely Deedar Ali is seeking post arrest bail in F.I.R No.175/2018 registered at Police Station Airport Nawabshah, for offences punishable under section 9 (c), Control of Narcotic Substances Act, 1997.

2. Brief facts of the prosecution case are that on 23.11.2018, complainant Inspector Nisar Ahmed Mughal, Station House Officer of Police Station Airport Nawabshah was on patrolling duty and received information that Applicant is selling Charas near Lakha chowk Muhallah, Daulat Colony Nawabshah. He rushed to the pointed place and found the Applicant with big black color shopper in his hand containing 14 big pieces of charas, weighing 5000 grams. Consequently, the Applicant was arrested and was brought at the aforesaid Police Station, where such FIR was lodged against him under Section 9-C, of Control of Narcotic Substance Act, 1997. Investigating Officer recorded statements of prosecution witnesses,

interrogated Applicant; got conducted chemical examination of recovered Narcotic Substance and obtained its report on 31.12.2018. Finally, Investigating Officer submitted Charge Sheet on 15.12.2018 before Special Court for Control of Narcotic Substances, Shaheed Benazir-Abad. The Applicant moved Bail Application No 1709 of 2018 in Special Case No 610 of 2018, before the learned Trial Court, which was dismissed vide Order dated 24.12.2018. Applicant being aggrieved by and dissatisfied with the impugned order has filed the instant Bail Application on 24.1.2019.

3. Mr. Muhammad Sharif M. Sial learned counsel for the Applicant has contended that Applicant is innocent and has been falsely implicated in the present crime by complainant/SHO, in connivance with other police peronnel, due to enmity. Per learned counsel no offence has been committed by the Applicant as narrated by the police. Per learned counsel the recovery of 5000 Gram of Charas is foisted upon the Applicant in a pre-plan conspiracy; that the allegation of selling the narcotics has not been established as police failed to arrest the alleged purchaser; that witnesses of the alleged recovery has not been cited from the locality, therefore, alleged recovery is doubtful; that there is violation of section 103 Cr.P.C; that as per chemical report dated 31.12.2018 and ratio of its weight, the Applicant cannot be accounted for the whole Narcotic Substance but for the material sent to the chemical examiner therefore, the applicant is entitled for the concession of bail; that the case property was sent for chemical examination on 07.12.2018 after delay of 15 days, which requires further probe in the matter; that the case of the applicant does not fall with the prohibitory clause of section 497(1) Cr.P.C; that that charge against the Applicant has not yet been framed by the learned trial court. Per learned counsel Applicant has no previous criminal record and entire case requires

further enquiry into the guilt of Applicant. He lastly prays for grant of bail to the Applicant. In support of his contention, reliance has been placed upon the cases of *Muhammad Hanif vs. The State* (SBLR 2016 Sindh 29), *Hayat vs. The State* (Un- reported bail application No.1626/2015 decided on 11.05.2016 by this Court), *Ghulam Murtaza vs. The State* (PLD 2009 Lahore 362), *Imtiaz Ali vs. The State* (2006 MLD 1961 [Karachi]), *Tarique alias Tari vs. The State* (2012 YLR 2684 [Sindh]), *Muhammad Nadeem vs. The State through Incharge FIA P.S. No.14 Gilgit* (2018 P.Cr.L.J. 881), *Imdad Ali Junejo vs. The State* (2002 P.Cr.L.J. 1086), *Ghuncha Gull vs. The State* (2008 YLR 385), *Faqir Hussain vs. Asad Ali Khan and onother* (2003 P.Cr.L.J. 518), *Pir Bux and another versus The State* (2007 MLD 1696), *Asghar Ali vs. The State* (2018 MLD 129), *Qamar Zaman vs. The State* (2017 YLR 874), *Hakim Mumtaz Ahmed and another versus The State* (PLD 2002 SC 590), *Bahawal alias Naanag vs. The State* (2011 P.Cr.L.J. 1200) and *Jamal-ud-Din alias Zubair Khan vs. the State* (2012 SCMR 573).

4. Mr. Shahid Ahmed Shaikh, Deputy Prosecutor General, Sindh opposed grant of bail to the Applicant and argued that Applicant was arrested at the spot with 5000 Gram of Charas. Per learned DPG the recovered material is Narcotics Substance, prohibited under Control of Narcotic Substances Act, 1997 which is recovered from exclusive possession of Applicant; that police is duty bound to register a case if any person possess, transports or sells and delivers on any terms as defined under Control of Narcotic Substances Act, 1997. He next argued that chemical examination Report dated 31.12.2018 of the recovered Narcotic Substance supports the prosecution case; that Applicant has been charged with offence under section 9 (c) of Control of Narcotic Substances Act, 1997 which is of serious nature and falls within the prohibitory clause of section 497 (1) Cr.P.C; that the prosecution has collected sufficient incriminating evidence

against the Applicant and if the bail is granted the applicant will continue to commit similar criminal activities, causing harm to the public at large. He next contended that mere sending the case property i.e. charas, a little bit late, for chemical examination Report is not fatal to the prosecution case, even otherwise this is a factual controversy can be thrashed out in evidence; that Prosecution case is fully supported by the statements of the witnesses therefore; Applicant is not entitled to the concession of bail at this stage; that the prosecution witnesses have no enmity with the Applicant which could suggest false implication of the Applicant.

5. I have heard learned counsel for the Applicant, Deputy Prosecutor General Sindh, and perused the material available on record as well as case law cited at the Bar.

6. I am conscious of the fact that while deciding a Bail Application, this Court has to consider the allegations made in the FIR, statements recorded under Section 161 Cr.P.C., nature and gravity of charge, other incriminating material against the accused, legal pleas raised by the accused and relevant laws. In this regard, I am fortified by the decision of Honorable Supreme Court rendered in the case of Shahzad Ahmed versus the State (2010 SCMR 1221).

7. Tentative assessment of record reflects that Applicant is arrested red-handed with possession of 5000 Gram of Charas (Narcotics Substances). Chemical Examination Report as discussed supra supports the prosecution case. The recovery of Charas was duly witnessed by the police officials who are as good witness as any other person and who had no ostensible reason to falsely implicate the Applicant in a case of present nature. Case of the Applicant is hit by prohibition contained in Section 51 of the Control of Narcotic Substances Act, 1997. My view is supported by the case decided by

the Honorable Supreme Court in the case the State v. Javed Khan, 2010 SCMR 1989 and State through Force Commander, Anti-Narcotics Force, Rawalpindi v. Khalid Sharif, 2006 SCMR 1265.

8. Reverting to the arguments of non- performance of provisions of section 103 Cr.P.C, section 25 of Control of Narcotic Substances Act, 1997 excludes applicability of section 103 Cr.P.C. thus, ratio of judgment in the case of Ghulam Murtaza (Supra) relied upon, is not relevant at bail stage, therefore no case of further enquiry is made out. Reliance is safely made in the case of Socha Gul vs. The State (2015 SCMR 1077).

9. Returning to the arguments of learned counsel with regard to sending the case property after delay of 15 days to the chemical analyzer for report, I am of the tentative view that this is very serious question which has been raised, however it is for the trial court to look into that aspect more attentively at the time of trial as to why the case property was lying with the prosecution for such long period and finally it was sent for chemical examination report on 07.12.2018 and its report was received on 31.12.2018; that at the bail stage this court cannot form the opinion regarding the aforesaid factual controversy, that can be thrashed out in evidence

10. I have noted that Applicant has failed to produce any material to suggest that he is falsely implicated in the alleged crime. Merely saying that he and his family members have been booked in various false cases by the police due to enmity is not sufficient to discard the prosecution story as false at this stage, which is even otherwise a factual controversy and, at bail stage only tentative assessment of the record is to be made.

11. The offence falls under section 9 (c) of Control of Narcotic Substance Act, 1997 which is punishable with life imprisonment.

12. The case law cited by the learned counsel for the Applicant is distinguishable from the facts and circumstances of the case in hand.

13. In view of the above facts and circumstances, the Applicant has not made out a case for grant of post arrest bail at this stage therefore; the instant Bail Application is dismissed.

14. The findings mentioned above are tentative in nature which shall not prejudice the case of either party at the trial stage. However, the learned Trial Court is directed to record evidence of the complainant within a period of one month where after the Applicant will be at liberty to move afresh Bail Application before the learned Trial Court on fresh ground, if any.

15. The above are the reasons of short order dated 8.3.2019.

J U D G E

Irfan Ali