

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No.1640 of 2021

Date *Order with signature of Judge*

For hearing of Bail Application.

01.10.2021

Mr. Nasir Mehmood, Advocate for the Applicant.
Mr. Talib Ali Memon, Assistant Prosecutor General, Sindh.

ORDER

Muhammad Saleem Jessar, J:- Through this bail application, Applicant Chamman Abbas seeks his release on post arrest bail in Crime No.371/2021 of P.S Sharif Goth, Karachi, under Section 6/9-C CNS Act. The applicant preferred his bail plea before the first forum, which was turned down by means of order dated 16.08.2021; hence, he has approached to this Court through this Application.

Since the facts of the prosecution case are already mentioned in the FIR, which is annexed with Court file, therefore, there is no need to reproduce the same.

Learned counsel submits that through same memo of recovery as well as FIR, co-accused Ramzan was found in possession of 1175 grams of charas; whereas, applicant is allegedly shown to have been found in possession of 1580 grams of charas. He further submits that co-accused Ramzan has been granted post arrest bail by the trial Court and the applicant has been declined, therefore, case of applicant has not been kept at par, which is not justified. He further submits that applicant may also be granted bail on the rule of consistency. In support of his contention, he submits true copy of order dated 07.08.2021 passed by the trial Court vide Criminal Bail Application No.3289/2021 (re-the State Versus Ramzan), which is hereby taken on record.

Learned Assistant P.G, Sindh appearing for the State, opposes the bail application on the ground that case of co-accused was different from presence case as quantity shown to have been recovered from co-accused is 1175 grams of charas and the applicant has been shown to have retained 1580 grams of charas. He; however, admits that memo of arrest and recovery is same even the FIR is also same. Learned Assistant P.G, Sindh could not controvert the fact that prosecution has not challenged said order passed by the trial Court in favour of the co-accused.

Heard arguments, record perused. Before discussing merits of the case, it will be appropriate to reproduce relevant portion of the order dated 07.08.2021 passed by the trial Court in favour of co-accused, which reads as under;_

*“Heard both the counsel and perusal of record. From the perusal of record, it appears that the alleged quantity of Cannabis Chars of 1175 Grams, wherein the Honourable Supreme Court in case of **Aya Khan and another Versus The State** (2020 SCMR 350) had granted bail to accused who was found in possession of 1100 grams and held it to be a border line case. It was held that; “...Suffice it to say that in the FIR or in the recovery memo, nowhere it is stated that whether it was net or gross weight of the narcotics and in this eventuality it becomes a border line case...”*

*The above passage clearly shows that the Honorable Supreme Court had granted bail to the accused on the ground that 1100 grams could fall in Section 9(b) CNS Act and by this virtue accused was granted bail. So in the present case accused is only found in possession of Cannabis Chars of 1175 Grams so he is also entitled for bail under the same principle. Moreover, the place of incident is thickly populated area, hence there is violation of section 103 Cr.P.C. All P.Ws are police officials, hence they are not likely to be tampered with. Applicant/accused is confined in judicial custody and no more required for investigation purpose. In these circumstances, this is a case of further inquiry and applicant/accused is hereby released on bail subject to furnishing **Security** in the sum of Rs.50,000/- (Rupees Fifty Thousands) with P.R bod of like amount to the satisfaction of this Court. Needless to mention here that the above assessment are tentative in nature and shall not affect the merits of the case.”*

Moreover, it is also out of reach of understand that when both accused were found in possession of certain quantity of contraband and were arrested by the police officer jointly and one FIR was lodged then how the case of co-accuse was to be bifurcated merely on the ground of less quantity even the case of co-accused is to be presumed to be a border line case. It is settled law that every accused could be presumed to be blue eyed boy of law until and unless he may be found guilty of the alleged charge and law cannot be stretched upon in favour of the prosecution particularly at bail stage. Looking to the pecuniary circumstances of instant case, I am of the considered view that applicant also deserves leniency in shape of his release on post arrest bail as his case is also covered by subsection 2 to section 497 Cr.P.C. Consequently, instant bail application is hereby allowed. Applicant **Chamman Abbas on of Muhammad Zaman**, shall be released on bail subject to furnishing his **security** in the sum of Rs.100,000/- (Rupees One Lac Only) and PR Bond in the like amount to the satisfaction of learned trial Court.

It need not to iterate that the observation(s) made hereinabove is/are tentative in nature and shall not prejudice the case of either party during trial. However, the learned trial Court may proceed against the Applicant, if he will be found misusing the concession of bail.

Learned trial Court is also hereby directed to conclude the trial within shortest possible time by examining all material witness, under intimation to this Court.

This Criminal Bail Application is disposed of in the terms indicated above.

JUDGE

Zulfiqar/P.A