

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No.1558 of 2021

Date

Order with signature of Judge

For hearing of Bail Application.

23.09.2021

Mr. Abdul Malik, Advocate for the Applicant.

Mr. Abrar Ahmed Khichi, Addl. Prosecutor General, Sindh.

ORDER

Muhammad Saleem Jessar, J:- Through this bail application, Applicant Hussain alias Goshi seeks his release on post arrest bail in Crime No. 371/2021 of P.S Baghdadi, 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 14.07.2021; hence, he has approached to this Court through this Application.

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

3. Learned counsel for the applicant submits per prosecution case, applicant was found in possession of 60 grams of contraband; however, per chemical report (Annexure-C available at page-31 of the Court file) net weight of said contraband is 52.4617 grams; hence, this case falls within the ambit of border line, in view of newly amendment made by the Provincial Government under Section 6-A of the Control of Narcotic Substances (Sindh Amendment) Act, 2021. In support of his contention, he places reliance upon case *ATEEB UR REHMAN @ ATTI MOCHI Versus The STATE and others (2016 SCMR 1424)*.

4. Learned Addl. P.G, Sindh appearing for the State opposes the bail application on the ground that per quantity shown to have been recovered from possession of the applicant, it falls within ambit of second category of section "6-A" & (a) (ii), which involves with capital punishment. He; however, admits that per chemical report, net weight of the contraband is 52.4617 grams which falls within the border line case.

5. **Heard arguments, record perused.** Before discussing merits or demerits of the case, it will be appropriate to go through amended section

6-A of the Control of Narcotic Substances (Sindh Amendment) Act, 2021, which reads as under;_

3. In the said Act, after section 6, the following new section shall be inserted:-

“6-A” Prohibition on manufacturing, selling, processing, extracting, preparation, purchasing, or delivering of psychotropic substance, controlled substance or narcotic drug.
No person shall, extract, prepare, process, manufacture, sell, purchase, deliver on any terms whatsoever, transport or dispatch psychotropic substance, controlled substance or narcotic drug.”

4. In the said Act, for section 9, the following shall be substituted:-

“9. Punishment for contravention of section 6, 6-A, 7 and 8.
Whoever contravenes the provisions of sections 6, 6-A, 7 and 8 shall be punished with-

(a) imprisonment which may extend to three years but shall not be less than six months, or with fine upto rupees one lac but shall not be less than rupees fifty thousand, or with both if the quantity of psychotropic substance or controlled substance or narcotic drug **category (i)** is one hundred gram or less;

(b) imprisonment which may extend to seven years but shall not be less than three years and shall also be liable to fine upto rupees five lac but shall not be less than rupees one lac if the quantity of psychotropic substance or controlled substance or narcotic drug **category (i)** exceeds one hundred gram but does not exceed one kilogram, or if the quantity of narcotic drug **category (ii)** is fifty gram or less;

(c) death or imprisonment for life or imprisonment for a term which may extend to fourteen years and shall also be liable to fine which may be upto one million rupees, if the quantity of narcotic drug category (i) and (ii), psychotropic substance or controlled substance exceeds the limit specified in clause (b):

Provided that if the quantity of narcotic drug category (i), psychotropic substance or controlled substance exceeds ten kilograms or narcotic drug category (ii), exceeds two kilograms, the punishment shall not be less than imprisonment for life.”

6. Per perusal of newly added section as per Amendment (*supra*) viz. 9-A, punishment for having possession of 100 grams or less is three years and shall not be less than six months or with fine up to Rs.100,000/- but shall not be less than Rs.50,000/- or with both. The recovery shown would fall under category (a)(i), therefore, does not fall under prohibitory clause of section 497 Cr.P.C. In the present case, contraband allegedly shown to have been recovered from the applicant is 52.4617 grams which apparently falls under category (a) (i), and maximum punishment provided thereby is three years; thus, does not fall within prohibitory clause of section 497 Cr.P.C. It is

settled law that every accused is presumed to be blue eyed boy of the law until and unless he is found guilty of the charge and law cannot be stretched upon in favour of the prosecution particularly at bail stage.

7. In case of ATEEB UR REHMAN @ ATTI MOCHI (Supra), Hon'ble Supreme Court of Pakistan while granting bail to the petitioner, held as under;_

"3.....After hearing the learned counsel for the petitioner, learned Additional Prosecutor General Punjab and perusing the material available on record, we have noticed that when the petitioner was apprehended, 1014 grams of heroin was allegedly recovered from a shopper bag which he was carrying in his right hand. On Court query, the learned Additional Prosecutor General, after going through the recovery memo available on the file of police record, could not show that the Page 3 of 3 recovered heroin was weighed along with the polythene bag or otherwise. If the recovered heroin was weighed along with the polythene bag, prima facie, the weight of the heroin without the polythene bag, if weighed, might have come to 1000 grams or less than that and in that eventuality, the case of the present petitioner would have fallen within the ambit of section 9(b) of the Control of Narcotic Substances Act, 1997. In this backdrop, the case of the petitioner becomes one of further enquiry falling within the purview of section 497(2) of the Code of Criminal Procedure."

8. In the circumstances and in view of above, I am of the considered view that case against applicant falls within ambit of subsection 2 to section 497 Cr.P.C and requires further inquiry. Consequently, instant bail application is hereby allowed. Applicant **Hussain alias Goshi son of Muhammad Bashir**, shall be released on bail subject to furnishing his solvent surety 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.

9. Needless to mention 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 is found misusing the concession of bail.

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

JUDGE