

**ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Criminal Bail Application No.S-301 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing of main case.

03.05.2021

Mr. Azizullah Buriro, Advocate for the applicant.
Ms. Rameshan Oad, Assistant Prosecutor General, Sindh.

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ORDER

Muhammad Saleem Jessar, J:- Through this bail application, applicant Ghulam Rasool seeks his release on post arrest bail in Crime No.45 of 2021 registered at P.S. A-Section Dadu, under Section 9(c) of CNS Act, 1997.

2. Crux of the prosecution's case as unfolded by complainant ASI Piyar Ali Lashari of P.S. A-Section Dadu are that he along-with his subordinates, left the police station under daily diary entry No.18 dated 14.03.2021 at 1730 hours for patrolling in the area. After visiting different places, when they reached at new gates constructed over the road leading from Dadu to Larkano; they saw a person was standing from western side to catch the transport who was having a plastic shopper in his hand, by seeing the police party coming towards him tried to slip away but was apprehended by the police party. After his arrest, the plastic bag was taken into possession which was containing the Chars. On inquiry, he disclosed his name to be present applicant. From his body search cash amount of Rs.300/- was secured which too were taken by the police in their possession. The Chars was got weighed which became 1020 grams. Out of it 20 grams were separated for chemical examination. Such memo of arrest and recovery was prepared at site in presence of PC Ali Hyder and PC Asadullah, later they came back to the police station where instant case was registered against applicant on behalf of State. After registration of the F.I.R the

investigation was carried out and after completion of legal formalities it was challaned.

3. Learned Counsel submits that applicant is innocent and nothing was secured from him. He next submits that alleged contraband was foisted upon him as the applicant failed to grease palms of the complainant party. He next submits that looking to the quantity of alleged contraband, the case against applicant falls within the ambit of border line between sections 9(b) and 9(c) Control of Narcotic Substances Act, 1997. He further submits that offence alleged committed by the applicant does not fall within the prohibitory clause of section 497 Cr.P.C, hence prays for his release on bail. In support of his contention, he places reliance upon the cases of **MUHAMMAD ISHAQUE Vs. The State [2019 S.L.J 415]**, and an unreported order of this Court passed in **Criminal Bail Application No.S-1189 of 2018 re-Nadir Ali Vs. The State**.

4. On the other hand, learned Assistant Prosecutor General, Sindh opposes the bail application on the ground that huge quantity of Chars has been recovered from applicant's possession, besides the offence is against the society.

5. Heard arguments and perused the record.

6. It is an admitted position that case has been challaned by the police and the applicant is no more required for the purpose of investigation or interrogation. All the PWs are from the police department; therefore, question of his abscondence or tampering with prosecution evidence does not arise. There is nothing on record to show that applicant is previously convicted or has been arrested in a case of similar nature in past. It is well settled principle of 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. The case of prosecution is based upon the evidence of police witnesses and it is very difficult to

keep reliance upon the veracity of police witnesses unless some independent witnesses are made as mashir to witness the incident. In this respect the reported judgment of this Court is also relevant being *Muhammad Hanif Vs. The State [SBLR 2016 Sindh 29]*, ratio whereof is absolutely applicable to the case in hand. It would be advantageous to reproduce the relevant portion from captioned case, which reads as under:-

“After careful consideration of contentions of learned Counsel for the parties and meticulous examination of available record, admittedly alleged contraband narcotics is charas weighing about 2500 grams. No private witnesses have been associated though recovery place is thickly populated area thus this aspect requires further probe. The alleged recovery effected from applicant is 2500 grams of contraband narcotics substance which is claimed by prosecution to be **charas** and dictum laid down in the case of GHULAM MURTAZA (supra), provides a policy regarding quantum of sentence, and it varies according to the nature of contraband narcotics substance. Such judgment is endorsed by the Honourable apex Court in the case of Ameer Zeb v. State (PLD 2012 SC 380) and another case of Fareedullah v. State (2013 SCMR 302). The case in hand, if considered in view of such framed policy, the maximum punishment in instant case may, at the most, come as 05 years and 06 months. The position, being so, makes it clear that instant case does not fall within the prohibitory clause of sub-section (1) of Section 497, Cr.P.C. Moreover, prosecution has not claimed that the applicant is previously involved in same nature of the cases. The applicant/accused has been in continuous custody since last five months and is no more required for any purpose of investigation nor the prosecution has claimed any exceptional circumstance (s) which could justify keeping the applicant/accused behind the bars for an indefinite period.”

7. Besides, the complainant himself has conducted the investigation, though evidence of the complainant, who himself conducted investigation, is admissible, but for the safe administration of justice, he should have entrusted the investigation of the crime to some other Police Officer, so that nobody could raise finger on the investigation which even otherwise could have been seemed to be an impartial investigation; hence, the learned trial Court has yet to determine as to whether the investigation carried out by the complainant, who himself has acted as Investigating Officer of the case, could safely

be relied upon or otherwise, therefore, at this juncture, the bail plea of the applicant cannot be refused. In this respect, reliance can be placed upon the case of *RAHEEL ABBAS Vs. The STATE [2018 P Cr. L J 1307]*. Moreover, the quantum of contraband shown to have been recovered from his possession is near to the border line case and does not exceed the limits of prohibitory clause of section 497 Cr.P.C. In my tentative view, the case of the prosecution requires further inquiry, therefore, at this stage bail cannot be refused to the applicant as yet the prosecution story has to be proved at the trial and if it so the case against the applicant requires further inquiry within the meaning of sub-section (2) to section 497 Cr.P.C. Consequently, the instant bail application is hereby allowed. The applicant shall be released on bail subject to furnishing his solvent suety in the sum of Rs.50,000/- (Rupees Fifty Thousand) and P.R bond in the like amount to the satisfaction of learned Trial Court.

8. Needless to mention here that the observations made hereinabove are tentative in nature and may not prejudice the case of either side at trial before the trial Court.

JUDGE