

Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Criminal Bail Application No. 967 of 2021

Date	Order with signature of Judge
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For hearing of bail application :

19.11.2021 :

Mr. Riazat Ali Sahar, advocate for the applicant / accused.

Mr. Muhammad Ayoob Qasar, Special Prosecutor ANF.

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NADEEM AKHTAR, J. – Through this bail application under Section 497 Cr.P.C., the applicant has sought admission to post-arrest bail in Crime No.06/2021 registered against him on 23.03.2021 at P.S. ANF District Hyderabad, under Section 9(c) of the Control of Narcotics Substance Act, 1997, and Section 23(1)(a) of The Sindh Arms Act, 2013. The applicant / accused had filed Criminal Bail Application No.41/2021, which was dismissed by the learned Additional Sessions Judge-I / MCTC Special Court for Narcotics, Mirpurkhas, vide order dated 16.10.2021.

2. The case of the prosecution, as set up in the subject FIR, is that the police party mentioned in the FIR received a spy information that a huge quantity of narcotic substance was lying in the house of the applicant ; on the pointation of the said spy, the police party reached the said house on the date and at the time mentioned in the FIR ; the said house was found locked ; no local resident of the area / private person was ready to act as a witness ; after breaking the lock of the said house, the police party entered therein ; upon search of the said house huge quantity of charas packed in numerous packets and several packets of opium were recovered ; the total weight of charas and opium was 496 kilograms and 24 kilograms, respectively ; two pistols of 30 bore each with four magazines and eight rounds, a 12 bore repeater with 45 cartridges, a Kalashnikov with magazine and 14 live rounds, and a 7 MM pistol were also recovered from the said house ; after seizing and sealing the above mentioned narcotic substance and weapons, the same were sent for examination to the Chemical Examiner and forensic laboratory, respectively ; and, a key of the said house and photo stat copies of the CNIC and a special police duty card of the applicant were also found at the time of the search of the said house.

3. It is contended by learned counsel for the applicant that there is an apparent malafide on the part of the police as the applicant has been falsely

implicated in the subject crime with ulterior motive ; despite the fact that the said house was situated in a densely populated area, no local resident or independent witness was associated by the complainant party nor did they disclose the names of such local residents / independent persons who allegedly did not cooperate with them ; due to this reason the case set up by the prosecution has become doubtful and cannot be believed ; the alleged recovery has been foisted upon the applicant ; it was alleged in the FIR that the applicant was the owner of the house from where the recovery was allegedly made, but the investigation revealed that the said house belongs to one Bheerje Singh (co-accused) who was subsequently nominated in the FIR ; the above named co-accused / owner had submitted his affidavit during investigation that the said house was rented out by him through a registered agreement to a tenant viz. Umeed Ali who was in possession thereof since 01.08.2020 ; the applicant was never in possession of the said house nor was he present there at the time of the alleged recovery ; the narcotic substance and/or weapons mentioned in the FIR were not recovered from the applicant ; the above named co-accused has already been granted the concession of bail by the learned trial Court ; the matter requires further inquiry ; the applicant has no previous criminal record ; the challan has been submitted before the learned trial Court ; and, there is no apprehension that the evidence will be tampered with or that the witnesses will be influenced by the applicant, or he will abscond if he is released on bail. In support of his above submissions, learned counsel placed reliance on Atif-ur-Rehman V/S The State and another, 2021 SCMR 324, Khan Zaib V/S The State through Special Prosecutor ANF, 2020 SCMR 444, Mukaram V/S The State and another, 2020 SCMR 956, Hussainullah V/S The State and another, 2019 SCMR 1651, Shiraz V/S The State, 2021 MLD 292 and Qamar Zaman V/S The State, 2017 YLR 874.

4. The bail application has been opposed by the learned APG by submitting that the FIR clearly shows that the narcotic substance and weapons were recovered from the house where copies of the CNIC and police duty card of the applicant were found which were sufficient to connect him with the subject crime ; the role of the applicant in relation to the commission of the subject offence is specific and clear in the FIR ; and, the applicant cannot be granted bail merely on the ground that the co-accused has been granted such concession as the role of the latter in the subject crime was completely different. The allegation of malafide and ulterior motive on the part of the police officials was specifically denied by learned APG. In support of his submissions, he relied upon Muhammad Noman Munir V/S The State and another, 2020 SCMR 1257, The State through Deputy Director, Anti-Narcotic Force, Karachi

V/S Mubin Khan, 2000 SCMR 299, Fazl-ur-Rehman V/S The State, 2020 P.Cr.L.J. Note 144, Sardoor Khan V/S The State, 2012 MLD 992, and Asmat Ali Shah V/S The State, 2020 P.Cr.L.J. Note 46.

5. I have heard learned counsel for the applicant and learned APG and have carefully examined the material available on record. According to the FIR, the alleged recovery was made from a house situated in a residential area, and before entering the said house, the police party had asked the residents of the area to act as witnesses, but they declined. The FIR does not specifically state as to how many persons were asked by the police party to act as witness and the names of such persons have also not been disclosed who had allegedly declined to act as witness. It was alleged in the FIR that the house from where the alleged recovery was made belonged to the applicant, however, it was revealed during the investigation of the case that the co-accused is the actual owner of the said house. Even according to the prosecution, the applicant was not in possession of the said house nor was he present there at the time of the alleged recovery, and the alleged recovery was not made from him. The applicant has been booked and charged under Sections 6 and 9(c) of the Act of 1997. Section 6 ibid prohibits production, manufacture, extraction, preparation, possession, sale, purchase, distribution, delivery, transportation and/or dispatch of narcotic substance described therein. Section 9 of the Act of 1997 provides the punishment for the contravention of Sections 6, 7 and 8 of the said Act. Prima facie, it appears that the applicant was not involved in any of the acts mentioned in Section 6 ibid. In such circumstances, his case is that of further inquiry falling under Sub-Section (2) of Section 497 Cr.P.C. My above view is fortified by Atif-ur-Rehman, Hussainullah and Khan Zaib (supra). The cases cited and relied upon by learned Special Prosecutor ANF cannot be applied in the instant case as the facts and circumstances therein were clearly distinguishable.

6. It is a matter of record that the co-accused has already been granted the concession of bail by the learned trial Court vide order dated 27.07.2021 subject to his furnishing surety in the sum of Rs.50,000.00 and a P.R. bond for the same amount, mainly on the ground that the narcotic substance and weapons mentioned in the FIR were not recovered from him. The same ground has been urged on behalf of the applicant as the alleged recovery was not made from him. Therefore, the rule of consistency shall apply to his case to this extent. To my mind, the case of the present applicant is on a better footing because if bail was granted to the owner of the house from where the alleged

recovery was made, the applicant, not being the owner of the said house and/or in possession thereof at the time of the alleged recovery, is certainly entitled to the concession of bail.

7. The applicant is behind the bars since the last about nine (09) months and in the meantime the investigation has been completed and the challan has been submitted before the trial Court. No private or independent person was associated as *mashir* in this case and all the witnesses of the prosecution are admittedly police officials, and as such the prosecution will be responsible to procure their attendance at the trial. Thus, there is no question or probability that the evidence will be tampered with or that the prosecution witnesses will be influenced by the applicant if he is enlarged on bail. It is well-settled that in the circumstances discussed above, concession of bail should be exercised in favour of the accused as a rule.

8. The guilt or innocence of the applicant is yet to be established as it would depend on the strength and quality of the evidence that will be produced by the prosecution and the defense before the trial Court. Therefore, it is clarified that the observations made herein are tentative in nature which shall not prejudice the case of either party nor shall they influence the learned trial Court in any manner in deciding the case strictly on merits in accordance with law.

9. Foregoing are the reasons of the short order announced by me on 19.11.2021 whereby the present applicant / accused Kanwar Singh S/O Nighjee Singh was admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs.50,000.00 (Rupees fifty thousand only) and a P.R. bond for the same amount to the satisfaction of the learned trial Court.

J U D G E