

ORDER SHEET
HIGH COURT OF SINDH, CIRCUIT
COURT, HYDERABAD

Cr. Bail Application No.S- 903 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE
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Applicant: Ameeruddin
Through Mr. Ayaz Hussain Tunio,
Advocate

The State: Ms. Safa Hisbani, Assistant P.G Sindh
along with I.O SIP Imamuddin

Date of hearing & Decision : **01.11.2021**

O R D E R

ADNAN-UL-KARIM MEMON, J :- The Applicant through the captioned bail application has called in question the rejection of his Anticipatory Bail Application by the learned Special Judge for C.N.S., Sanghar vide order dated 05.10.2021, with the following observations:

“Since there is name of accused and according to the Investigation of the I.O, present accused is the big dealer of the narcotic and remained in such nefarious activity and he raided his house for arrest but he was not found there. Furthermore, the accused failed to show his income from which source he earns and what was the enmity with police. Mere words/allegations that political figures involved him due to some rivalry, such contention without any proper evidence, at bail stage, cannot be considered especially when there is no malice or malafide intention on the part of the police. Accused failed to establish enmity with police and no any proof came on record regarding malice of police to arrest him falsely in the case and it is the cardinal principle of law for the purpose of getting pre-arrest bail there must be malice or malafide intention at the hands of police. As far as the contention of learned counsel for the accused that accused is suffering from urine disease, suffice to say that there is no any medical record which shows that such disease is detrimental to his life. A huge quantity of 20 kilograms recovered from co-accused who disclosed the name of accused Abid Kaloi Baloch and according to the investigation of the I.O actual name of Abid Kaloi is Ameerudin alias Abid alias Chari resident of village Bahadur Kaloi where he also reached to arrest as per his diaries, therefore, no malafide or malice came on record to falsely implicate him in this case. The evidentiary value of the disclosure of co-accused can be ascertained at the time of evidence nor at the stage of bail before arrest as the huge recovery of narcotics effected from co-accused and if the accused enlarged on bail before arrest there will be no evidence against him except the disclosure of co-accused.”

2. At the outset I asked learned counsel, that prima-facie the aforesaid tentative assessment of the record as opined by the learned

trial court could not be brushed aside; and, what could be the malafide intention of police to book the applicant in the contraband case on the statement of main accused.

3. Learned counsel, in his abortive attempt, by convincing on the point of Pre-arrest bail under section 498-A Cr.P.C, gave brief history of the case by saying that on 12.08.2021 at about 0200 hours complainant SIP Manzoor Ali Babar of P.S Shahdadpur lodged FIR alleging therein that on 12.08.2021 he along with subordinate staff namely PC Rano Khan, PC Imran, PC Shahzad Ali left P.S along with investigation bag in police mobile during patrolling when reached at Shahdadpur-Hala road near Sultan CNG Pump and alighted from the police mobile and started checking of the vehicles and at about 0100 hours a white colour Mehran car came from Hala side and it was signaled through torch to stop and the accused stopped the vehicle, alighted and tried to run away but the police apprehended accused and on inquiry accused disclosed his name Abid Ali son of Abdul Ghaffar by caste Rajput resident of Rajput Colony, Shahdadpur and disclosed his CNIC No.44204-8614116-5 and from his body search nothing was recovered from the accused and on checking of car police secured a plastic bag behind the rear seat of the car it was found containing 20 packets of charas, each packet containing two pieces of charas total 40 pieces of charas wrapped in plastic. On inquiry, he disclosed that he purchased the charas from Abid Kaloi and further disclosed that he used to sell the charas. On checking of car, it was without registration number having engine No.434133, Chassis No. PK.621495, model 2004/2005 worth of Rs:3,50,000/- and police asked about registration documents but he failed to produce them. The car was also used in the commission of offense and police also secured the car u/s 550 Cr.P.C. The recovered charas was found 20 kilograms. Police collected one piece from each packet total of 20 pieces weighing 10 kilograms were withdrawn for chemical analysis and sealed as parcel "A" whereas the remaining 20 pieces of charas weighing 10 kilograms were sealed as parcel "B" separately. The accused and case property was brought at P.S and lodged FIR against the accused person.

4. On merits learned counsel for the applicant has contended that applicant is innocent and falsely implicated with malafide intention by the police as the present accused has dispute with Zardari

community and with one Shahid Khan Thaheem MPA of PS-45 Sanghar over the installation of two brick-kiln near Abu Bakar Zardari stop situated on Hingora road leading to Lundo as people of Zardari community were demanding 10 percent share from the production of brick-kiln and bent upon to harass the applicant. He vehemently contended that co-accused disclosed the name of present accused as Abid Kaloi Baloch and there is no name of present accused in the FIR and the name of present accused inserted with malafide intention in the challan by the police due to political pressure and present accused did not know the principal co-accused Abid Ali Rajput and the investigation officer did not collect a single piece of evidence which may connect the present accused with the commission of offense except the statement of principal accused Abid Ali Rajput which hit Article 38 and 39 of Qanun-e-Shahadat Order, 1984 which is not admissible in evidence. He vehemently contended that the investigation officer even failed to collect any CDR number of co-accused and present accused to show the connection between the two. He vehemently contended that the name of another accused with the name of Abid Kaloi which according to police is present applicant came to the surface by the disclosure of the principal accused Abid Ali Rajput who disclosed that he has purchased the charas from Abid Kaloi (according to police version present applicant Ameerudin is the same person Abid Kaloi), the question is that whether this admission on the part of principal co-accused is a fact or otherwise and the present accused has been implicated in this case falsely to settle personal vendetta of political figures of the ruling party of the area and this aspect of the case can be determined during evidence. He vehemently contended that total investigation is silent that at what time and place the alleged charas was sold by the present accused to the principal accused and police did not produce accused Abid Ali Rajput before learned Judicial Magistrate to record his confessional statement for the reason best known to them. He vehemently contended that Investigation Officer failed to identify the owner of Mehran car even he did not write any letter to Motor Registration Authority nor Suzuki company to connect the car with the offenders and the police investigation is also silent from where such a huge quantity of narcotics was taken by the principal accused. He vehemently contended that according to the complainant, he had secured 10 pieces of charas weighing 10 kilograms for chemical

analysis whereas, from remaining 10 pieces weighing charas sample was not obtained for chemical analysis, therefore, offense with which the accused charged does not fall in the prohibitory clause because of case law 2009 PLD 362 Lahore and according to the criteria of the sentence as laid down in case law (supra) of such 10 kilograms, is rigorous imprisonment for 12 years and 6 months and fine Rs:60,000/- and in such sentence pre-arrest bail has been confirmed by Honourable Supreme Court of Pakistan in Ameer Zaib's case, therefore, accused is entitled to be admitted on pre-arrest bail as the offense does not fall under the prohibitory clause of section 497(1) Cr.P.C. He lastly contended that the accused is a serious patient of kidney/bladder and so also of Hepatitis-C and he is under continuous treatment with Agha Khan and South City Hospitals Karachi and he passes urine through the urinary bag and even cannot eat ordinary food. He vehemently contended that there is no likelihood of tampering with the prosecution case as all the P.Ws are police officials. He referred to photocopies of some test reports and medical records regarding the urine bladder of the accused. He along with statement also filed a report of urine detail reports. He relied upon case law 1995 PLD 34 Supreme Court, 2009 PLD 362, 2012 PLD 380, 2015 YLR 568, 2018 MLD 1383, 2014 YLR 188, 2016 SCMR 18, 2018 YLR 716 and 2018 P.Cr.L.J 919.

5. Ms. Safa Hisbani, learned Assistant P.G Sindh, opposed this bail application on the ground that the name of accused has been mentioned in the charge sheet and the principal accused Abid Ali Rajput disclosed his name from whom 20 kilograms charas was recovered. She vehemently contended that the police has no inimical term with present accused and upon disclosure of the name of present applicant by co-accused, police had inserted his name in the charge sheet and the present applicant was the main culprit who had given such a huge quantity of charas to principal accused Abid Ali Rajput and the recovery of the quantum from accused connect him with the commission of crime, therefore, at this stage he is not entitled to extraordinary relief of pre-arrest bail under Section 498 Cr.P.C.

6. I have heard learned counsel for the parties at some length and gone through the record and case law cited at the bar.

7. The Honorable Supreme Court in the recent judgment in pre-arrest bail matters has held that judicial protection is based on equity and cannot be extended in every run-of-the-mill criminal case founded upon incriminatory evidence, warranting custody for investigative purposes. Primarily, the remedy of extra-ordinary concession of pre-arrest bail is meant to save innocent from false implication, rigors of trial, and humiliation. On this proposition, I seek guidance from the decision of the Honorable Supreme Court rendered in the case of Gulshan Ali Solanqi and others v. The State through P.G. Sindh (2020 SCMR 249).

8. Tentative assessment of record reflects that the name of accused has been mentioned in the charge sheet on the statement of main accused Abid Ali Rajput who disclosed his name from whom 20 kilograms charas was recovered. *Prima-facie*, in the narcotic cases the applicant cannot be granted anticipatory bail to subvert or undermine investigative procedure/process that essentially includes an arrest to bring the statutory exercise to its logical end for effective and meaningful prosecution of the offense through the collection of information / evidence consequent upon arrest. Malafide, manifestly intriguing upon the intended arrest, is the only justification to suspend or divert the usual course of law, a step most extraordinary by all mean, which is not the case in hand rather prosecution story discloses seven (07) criminal cases of narcotics were lodged against the applicant i.e. Crime No.40 of 2020 under Section 216-A PPC, 71 of 2003 under Section 9/A Control of Narcotic Substance Act, 1997, 72 of 2003 under Section 9/A Control of Narcotic Substance Act, 1997, 74 of 2003 under Section 9/A Control of Narcotic Substance Act, 1997, 103 of 2003 under Section 9/B Control of Narcotic Substance Act, 1997, 180 of 2013 under Section 9/C Control of Narcotic Substance Act, 1997 and 64 of 2016 under Section 9/B Control of Narcotic Substance Act, 1997. At this stage, learned counsel for the applicant submitted that applicant has been acquitted from all cases. Be that as it may, prima facie this is alarming situation.

9. Investigating officer present in court stated that after grant of pre-arrest by this court, the applicant completely failed to co-operate in the investigation; and, due to an order dated 11.10.2021 passed by this court, he could not take legal action against him. Finally, he

emphasized that the custody of the applicant at the relevant point in time was required, however, since the investigation still can be carried out, he is required for investigation purpose to reach the correct conclusion of the investigation and submit the final report before the competent Court of law; however, the applicant succeeded in all his attempts to save his skin from clutches of law. He further added that the applicant has criminal past as discussed supra.

10. Prima-facie police have no inimical term with present applicant and upon disclosure of the name of present applicant by co-accused, police had inserted his name in the charge sheet and the present applicant was the main person who had given such huge quantity of charas to accused Abid Ali Rajput and the recovery of charas from accused prima facie connects him with the commission of crime and the medical record as pointed out does not show that life of the applicant is detrimental; and, the offense with which the applicant is charged is punishable with death or imprisonment of life, therefore, at this stage the applicant is not entitled to the grant of extraordinary relief in the shape of pre-arrest bail under Section 498 Cr.P.C for the reasons discussed supra.

11. Keeping in view all the facts and circumstances and while seeking guidance from the judgment of Honorable Supreme Court in the cases of Chaudhry Shujat Hussain v. The State (1995 SCMR 1249), Muhammad Umar vs. the State and another (PLD 2004 Supreme Court 477), Alam Zeb and another v. State and others (PLD 2014 S.C. 760) and Muhammad Sarfraz Ansari. Vs. State and others. (PLD 2021 SC 738), I am of the tentative view that the case of the applicant does not fall within the ambit of “further inquiry” falling within the ambit of section 497(2) Cr.P.C, rather there are reasonable grounds for believing that the applicant has participated in the commission of an alleged offense under Section 9(c) CNS Act, 1997 registered at P.S Shahdadpur.

12. No indulgence of this Court is made out to grant extra-ordinary relief of pre-arrest bail to the applicant under the circumstances of the case.

13. As a consequence of the facts and circumstances surfaced on the record, I am not persuaded to grant extraordinary relief to the

applicant under Section 498 Cr.P.C. Resultantly, instant Criminal Bail Application No. S- 903 of 2021 arising out of FIR No. 180/2021, under section 9(c) CNS Act, 1997 registered at P.S Shahdadpur is hereby dismissed. Consequently, interim pre-arrest bail already granted to the applicant, vide order dated 11.10.2021, is hereby recalled.

14. The observation of this court is tentative which shall not prejudice the case of either party at the trial.

JUDGE

Sajjad Ali Jessar