

Order Sheet
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

Cr. B. A. No. S- 879 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE
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03.12.2021

Mr. Zubair Ahmed Khuhawar, Advocate for the applicant
Mr. Fayaz Hussain Sabki, A.P.G.

ORDER

ADNAN-UL-KARIM MEMON, J. - Through instant Criminal Bail Application, applicant Shafique Ahmed seeks post-arrest bail in Crime No. 220 of 2021 registered at police station Qasimabad, Hyderabad under Section 9-C C.N.S. Act, 1997.

2. The accusation against the applicant is that on 22.09.2021 the police party comprising of ASI Allah Warayo Pitafi of Police Station Qasimabad, Hyderabad along with his subordinate staff in police Mobile were patrolling, receiving spy information regarding the sale of Ice drug at Anwar Villas Chowk, arrived there and apprehended the applicant with the blue color shopper in his hand. On his search three notes of Rs.100/- each was recovered from his side pocket. The blue color shopper was checked and found containing small pieces of Ice drug wrapped with Khakhi tape like an envelope, which was weighed at the spot and found weighing 1,005 grams. In absence of public mashirs, PC Lakhmir and PC Ashique Hussain were nominated as mashirs; and, the Ice drug was sealed, such memo of arrest and recovery was prepared in presence of mashirs, then accused and case property were brought at Police Station where instant FIR was registered against the applicant under Section 9-C C.N.S. Act 1997.

3. Mr. Zubair Ahmed Khuhawar learned counsel for the applicant submits that the applicant / accused is innocent and has falsely been roped in this case and the alleged recovery has been foisted upon him after arresting him from his house; that no private person has been cited as mashir, though, place of incident is thickly populated area; that both the mashirs are subordinate of the complainant, therefore, the false implication of applicant/accused cannot be ruled out; that applicant/accused is confined in jail since

his arrest and is no more required for further investigation, therefore, he is fully entitled to grant of bail. He insisted that it is a borderline case between sub-clauses (b) and (c) of section 9 CNSA and punishment is always to be awarded for the offense in commensuration with the quantum of recovery of contraband, therefore, the quantum of punishment has to be ascertained by the Trial Court. Learned counsel for the applicant has emphasized that purported Methamphetamine, which is allegedly recovered, has been classified as a stimulant, which makes it legally available only through a non-refillable prescription; that medically it may be indicated for the treatment of attention deficit hyperactivity disorder (ADHD) and as a short-term component of weight-loss treatments, and it is prescribed, therefore it is yet to ascertain whether this is Psychotropic substance as opined by the Chemical Examiner. He also asserted that Methamphetamine is not covered under the Act, 1997 Rules and therefore, the prohibition imposed under the law does not apply. In support of his contention, he relied upon the case law reported at 2020 SCMR 350, 2016 SCMR 1424, 2017 YLR 874 (Sindh), 2012 MLD 1032 (Sindh), 2011 YLR 2316 (Sindh), 2018 YLR Note 19, 2020 MLD 59, 2020 YLR Note 20, 2020 P.Cr.LJ Note 40 and 2013 MLD 48.

4. On the other hand learned A.P.G. has vehemently opposed the bail plea of applicant and contended that the accused was arrested on the spot and huge quantity of Ice drug was recovered from his exclusive possession in presence of mashirs, who are good witnesses as others, even otherwise, no ill intention and enmity is alleged against the Complainant to book the applicant/accused in this case; that place of incident is dark, therefore, private persons could not be associated to attest the recovery; that the offense committed by the applicant/ accused, is against the society and such kind of offenses should be dealt with dynamically as use of Ice drug is destroying the future of young generation. He lastly prayed for dismissal of the bail applicant.

5. I have heard learned counsel for the applicant and learned Addl. P.G. and have carefully examined the material available on record including the test report submitted by the Chemical Examiner.

6. It appears that the present applicant is booked for the offenses punishable under Section 9-C C.N.S. Act, 1997. Learned counsel for

the applicant argued that Methamphetamine is not covered under the provisions of Act 1997 and its schedule at serial No. 47 is the Psychotropic substance covered under the Act, 1997 and Rules framed thereunder. But from the perusal of Schedule, the said Methamphetamine is shown at Sr. No. in the table, specifying small and commercial quantity for determining the quantum of punishment also. Even, I have perused the aforementioned test report dated 5.10.2021, the gross weight and net weight of Methamphetamine was 1042 grams. The Chemical Examiner opined the sample as Methamphetamine/Ice allegedly recovered from the applicant falls within category (i) specified in Clause (s) of Section 2 of the Act of 1997 substituted through The Control of Narcotics Substance (Sindh Amendment) Act, 2021, and the net weight 1042 thereof is more than double of the maximum limit of one kilogram (1,000 grams) prescribed in Clause (b) of Section 9 *ibid*. Therefore, this is not a borderline case between the Clauses (b) and (c). The offense alleged against him falls within the prohibition contained in Section 51 of the Act of 1997 and Section 497 Cr.P.C. The punishment of the offense falling under clause (c) is death or imprisonment for life or imprisonment for a term that may extend to fourteen years. Thus, the prohibition contained in Section 51 of the Act of 1997 shall apply to this case, and it also falls within the prohibitory clause of Section 497 Cr.P.C.

7. In the present case, said alleged drugs were recovered from the conscious possession of the applicant and looking to the Mashirnama and statement recorded under section 161 Cr. P.C, *prima facie* connects the present applicant with the alleged offence. It is also required to be considered here the large interest of society, in such kind of case. Therefore, the applicant is not entitled to the concession of post-arrest bail and there appears to be no exception to this rule in the facts and circumstances of the instant case.

8. The above view is fortified by *Muhammad Noman Munir V/S The State and another*, (2020 SCMR 1257), and *Bilal Khan V/S The State*, (2021 SCMR 460). In the former case, 1,380 grams of cannabis and 07 grams of heroin were recovered from the accused, and in the latter case, the quantity of recovered Ice was 1,200 grams. In both the said authorities, the concession of bail was declined by the Hon'ble Supreme Court by holding that the prohibition embodied

in Section 51 of the Act of 1997 was applicable thereto. It was also held in Muhammad Noman Munir (supra) that non-association of a witness from the public and his non-cooperation was usual conduct symptomatic of social apathy towards civic responsibility; and, even otherwise the members of the contingent being functionaries of the State are second to none in their status, and their acts statutorily presumed, prima facie, were intra vires.

9. Red-handed arrest of applicant with considerable quantity of lethal contraband, confirmed by a positive Chemical report prima-facie connects the applicant with the alleged crime. Applicant's claim of false implication is an issue that cannot be attended without going beyond the scope of tentative assessment, a venture prohibited by law.

10. The guilt or innocence of the applicant is yet to be established as it would depend on the strength and quality of the evidence produced / to be produced by the prosecution and the defense before the trial Court. Therefore, it is clarified that the observations made herein are tentative which shall not prejudice the case of either party or shall influence the trial Court in any manner in deciding the case strictly on merits under law.

11. In view of the above, the instant bail application is dismissed with direction to the trial Court to conclude the trial of the subject case within two (02) months strictly under the law. Let this order be communicated to the trial Court for compliance.

JUDGE