

**IN THE HIGH COURT OF SINDH AT KARACHI**

Cr. Bail Application No.2153 of 2021

Rizwan son of Abdul Rahseed      Versus      the State

1. For orders on office objection.
2. For hearing of bail application.

Mr. Muhammad Riaz, Advocate alongwith applicant Rizwan  
Syed Meeral Shah Bukhari, Additional PG.

Date of hearing 17.12.2021

**ORDER**

**AHMED ALI M. SHAIKH, CJ.**- Applicant, indicted in crime No.186/2020 registered at PS Shershah under Section 6/9-b, CNS Act, seeks pre-arrest bail. On account of non-prosecution, the trial Court vide impugned order dated 06.11.2021 dismissed his application seeking pre-arrest bail.

2. Facts as stated in the aforementioned FIR are that on 06.9.2020 complainant SIP Meer Hasan, heading a police party, was on patrolling in the area. On suspicion, police stopped a person who disclosed his name as Muhammad Rizwan son of Abdul Rasheed and on search police allegedly recovered 130 grams of charas wrapped in white shopper from side pocket of his shirt. Police also seized his Super Star motorcycle bearing registration No.KHV-9527 under Section 550 Cr.P.C.

3. Learned counsel for the applicant while advocating innocence of the applicant contended that the alleged recovery of contra band item has been foisted upon him as he failed to grease the palm of police party on patrolling in the area. He submitted that though the incident has taken place in a densely populated area at 06.50 P.M. but none from the locality was cited as witness. He further submitted that the alleged offence does not fall within the prohibitory clause of Section 497 Cr.P.C. He while concluding his submissions, pointed out that the Applicant is neither a previous convict nor ever indulged in likewise offences. He accordingly prays for confirmation of the interim pre-arrests bail granted to the applicant.

4. Learned Additional Prosecutor General, Sindh, Syed Meeral Shah Bukhari, while conceding that despite submission of challan a year's back only one prosecution witness amongst four has been examined and the alleged offence does not fall within the prohibitory clause of Section 497 Cr.P.C., half-heartedly opposed the confirmation of interim pre-arrest bail granted to the Applicant earlier.

5. I have heard the learned counsel for the Applicant, Additional Prosecutor General, Sindh and perused the material available on record. Per contents of the FIR the alleged recovered charas was wrapped in white shopper weighed 130 grams and his case falls under Section 9(b) of the CNS Act, the maximum punishment whereof is seven years and fine. Additionally, though the police submitted challan within the stipulated period but till date only one out of four prosecution witnesses, all are police officials, have been examined. It has been observed that in the case like the present one the witnesses are always police officials allegedly demanding illegal gratification from the accused, which, prima facie, supports allegation of malafide on the part of police patrolling to maintain law and order in the vicinity. The purpose of bail before arrest is to protect those in whose favour a strong plea of innocence was in existence to consider the availability of ulterior motive/malafide.

For the foregoing, I am of the considered view that applicant is entitled to the grant of pre-arrest bail and thus interim pre-arrest bail granted vide order dated 17.11.2021 is hereby confirmed on same terms and conditions. The observations made hereinabove are purely tentative in nature and the trial Court shall not be influenced by the same while deciding the case on merits.

Chief Justice