

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No. 2209 of 2021

Date	Order with signature of Judge
------	-------------------------------

For hearing of bail application :

21.12.2021 :

Mr. Muhammad Anwar Zaib Khan, advocate for the applicant / accused.

Ms. Amna Ansari, Addl. P.G. a/w SIP Abdul Razzaq of P.S. Preedy.

.....

NADEEM AKHTAR, J. – This bail application under Section 497 Cr.P.C. has been filed by the applicant / accused Muhammad Kamal alias Anda seeking admission to post-arrest bail in Crime No.1557/2021 registered against him on 13.10.2021 at P.S. Preedy Karachi South under Sections 6 and 9(c) of The Control of Narcotic Substances Act, 1997 (**‘the Act of 1997’**). The applicant / accused had filed Criminal Bail Application No.3696/2021, which was dismissed by the learned Sessions Judge Karachi South vide order dated 22.10.2021.

2. The case of the prosecution, as set up in the subject FIR, is that during the patrolling of the area by the police party on the date and at the time and place mentioned in the FIR, white plastic shopping bags containing one packet of charas (cannabis) wrapped in yellow cotton and ice were recovered by the police from the applicant, which were found to be 1,100 grams and 68 grams, respectively, according to the digital weighing scale ; the recovered charas and ice were seized and separately sealed on the spot ; and, the incident took place in the presence of the patrolling police party as no other person was willing to act as *mashir* / witness.

3. It is contended by learned counsel for the applicant that there is malafide on the part of the police and the applicant has been falsely implicated in the subject crime with ulterior motive ; the alleged recovery has been foisted upon the applicant by the police ; the applicant was picked up forcibly by the rangers from his house on the night of 07.10.2021, whereafter his mother sent several applications to the senior officials of Rangers and Police on 09.10.2021 through courier service ; the subject FIR was registered against the applicant subsequent to and during his illegal detention ; despite the fact that the alleged place of arrest of the applicant was a public place, no independent witness was associated by the police nor did they disclose the names of such independent persons who allegedly did not cooperate with them ; the matter requires further

inquiry ; and, there is no apprehension that the evidence will be tampered with or that the witnesses of the prosecution will be influenced by the applicant, or he will abscond if he is released on bail.

4. On the other hand, learned APG contends that the FIR clearly shows that charas and ice were recovered from the applicant which were immediately seized and sealed on the spot ; the role of the applicant in relation to the commission of the subject offence is clear and specific in the FIR ; there was no delay either in lodging the FIR or in sending the narcotic substance recovered from the applicant for chemical examination ; the test reports submitted by the Chemical Examiner support the case of the prosecution ; and, there are several other cases pending against the applicant wherein he has been nominated for the offences under the Act of 1997. The allegation of malafide and ulterior motive on the part of the police officials has been specifically denied by learned APG. It is further contended by her that in view of the amendments made in Section 9 of the Act of 1997 through The Control of Narcotics Substance (Sindh Amendment) Act, 2021, (**'Sindh Amendment Act of 2021'**) the offence committed by the applicant falls within the ambit of clause (c) of Section 9 of the Act of 1997, and accordingly it falls within the prohibitory clause of Section 497 Cr.P.C.

5. I have heard learned counsel for the applicant and learned APG and have carefully examined the material available on record including the test reports submitted by the Chemical Examiner after examining the charas and ice allegedly recovered from the applicant. According to the said test reports, the gross weight and net weight of charas was 1,100 grams and 1,090 grams, respectively, and that of ice was 70.8479 grams and 69.6573 grams, respectively. The charas (cannabis) and ice (methamphetamine) allegedly recovered from the applicant fall within category (i) and category (ii), respectively, specified in Clause (s) of Section 2 of the Act of 1997 substituted through The Control of Narcotics Substance (Sindh Amendment) Act, 2021. The net weight of charas is more than the maximum limit of one kilogram (1,000 grams) prescribed in Clause (b) of Section 9 *ibid*, however, it can be termed as a borderline case. Whereas, the net weight of ice is about 40% more than the maximum limit of 50 grams prescribed in Clause (b) of Section 9 *ibid*. The quantity of ice falls within the ambit of clause (c) of Section 9, and being about 40% more than the maximum limit prescribed in clause (b), it significantly exceeds the maximum limit prescribed therein. Therefore, to the extent of ice, this is not a borderline case between the said clauses (b) and (c).

6. The punishment of the offence falling under clause (c) of Section 9 *ibid* is death or imprisonment for life or imprisonment for a term which 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. Therefore, the applicant is not entitled to the concession of bail and there appears to be no exception to this rule in the facts and circumstances of the instant case.

7. 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 the 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 the non-association of a witness from the public and his non-cooperation was a 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*.

8. The record shows that the charge sheet has been submitted in this case before the trial Court. 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 in nature which shall not prejudice the case of either party nor shall influence the learned trial Court in any manner in deciding the case strictly on merits in accordance with law.

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

J U D G E