

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.2221 of 2021

Rehan Nadir Ali,
applicant through:

Mr. Muhammad Nizar Tanoli, advocate

The State,
through:

Ms. Rubina Qadir, DPG

Date of hearing:

29.12.2021

Date of order:

07.1.2022

ORDER

Adnan-ul-Karim Memon, J. – Through this bail application, applicant Rehan Nadir Ali seeks bail after arrest in F.I.R No.1401/2021, registered under Section 6/9-C of the CNS Act, 1997 at PS Shah Latif Town Karachi.

2. Facts of the case as per FIR are that on 12.08.2021, complainant/SIP Muhammad Jurial had lodged FIR bearing Crime No.1401/2021 for offense punishable under Section 9-C CNS Act, 1997 at P.S Shah Latif Town stating therein that on the said date when he was on patrolling and reached at Pir Sirandhi Goth, near Lashari Goth, Malir Karachi, he apprehended two persons namely Rehan Nadir Ali (present applicant/accused) and Hazir Shah. It is further stated that the complainant had recovered 3560 grams charas from the possession of the present applicant/accused, while 1180 grams of charas was also recovered from the possession of other accused namely Hazir Shah. The recovered charas was sealed at the spot and taken into custody; hence he registered the instant FIR.

3. Mr. Muhammad Nizar Tanoli learned counsel for the applicant contended that the applicant is innocent and has been falsely implicated in the present case with malafide intention and ulterior motives; that the alleged recovery of charas has been foisted upon the applicant; that the complainant has not disclosed the name and *hulia* of any private mashir; that nothing has been recovered from the possession of the applicant; that sample for chemical examiner has not taken from the alleged charas which makes the whole prosecution story doubtful. He, therefore, prayed for allowing this bail application.

4. Learned DPG, representing the State contended that a huge quantity of charas has been recovered from the possession of the applicant; and, his accomplice which cannot be foisted. Learned DPG, therefore, contended that this bail application merits no consideration and is liable to be dismissed.

5. I have anxiously considered the arguments advanced by the respective counsel and had scanned the entire record.

6. Perusal of the record reflects that the applicant was arrested on 12.8.2021 with charas weighing 3560 grams and from the other person charas weighing 1180 grams was recovered. Mashirnama of arrest and recovery dated 12.8.2021 supports the alleged recovery of the narcotic drug as defined in Section 2 of the CNS Act, 1997. The alleged narcotics were dispatched to the Chemical Examiner on the next date i.e. 13.8.2021; and, such chemical report dated 27.10.2021 is positive and also supports the prosecution version.

7. Even, I have perused the aforementioned test report dated 27.10.2021, the gross weight and net weight of **charas weighing 3560 grams**, were also recovered from the applicant. 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.

8. In the present case said alleged quantity of drugs as discussed supra were recovered from the conscious possession of the applicant; that the chemical report dated 27.10.2021 of drugs i.e. charas as discussed supra support the prosecution version and looking to the *Mashirnama* and statement recorded under section 161 Cr. P.C, prima facie connects the present applicant with the alleged offense. 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. Adverting to the contention of learned counsel for the applicant that no such sample from the recovery charas was taken for the chemical examiner, suffice it to say that the chemical report submitted by the Director Laboratories and Chemical Examiner, Government of Sindh vide letter dated 27.10.2021 shows that sample of charas (02) Pels, number C-5879/2021, received on 13.8.2021, through SI Shahzado Khan is sufficient to draw the inference that the subject sample was dispatched for chemical examination on the vary second day of the alleged incident and even otherwise the same factum could only be thrashed out when the complainant is examined by the learned trial Court to that effect. However, this court, at this stage, is not in a position to suggest either way that sample was taken out from the alleged narcotics or otherwise and sent for chemical examiner for the report and this aspect is left for the learned trial court to look into that aspect after recording evidence.

9. The above view is fortified by *Muhammad Noman Munir v. The State and another*, (2020 SCMR 1257), and *Bilal Khan v. 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 1200 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.

10. Red-handed arrest of the applicant with a 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.

11. 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.

12. 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. If the trial is not concluded within the stipulated time at least the complainant must be examined; and, strong reasons shall be put forward if the trial is not concluded. A report shall be submitted to the MIT-II of this Court. Let this order be communicated to the trial Court for compliance.

JUDGE