

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No. 2158 of 2021

Date	Order with signature of Judge
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For hearing of bail application :

12.01.2022 :

Mr. Munir Ahmed Khan, advocate for the applicant / accused.

Mr. Zafar Ahmed Khan, Addl. P.G.
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NADEEM AKHTAR, J. – Through this bail application under Section 497 Cr.P.C., the applicant / accused Afsar Khan seeks admission to post-arrest bail in Crime No.461/2021 registered against him on 21.09.2021 at P.S. Gadap City Malir Karachi, 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.4363/2021, which was dismissed by the learned Model Criminal Trial Court / 1st Additional Sessions Judge Malir Karachi vide order dated 16.10.2021.

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, 1,240 grams of charas was recovered by the police from the applicant which was seized and sealed on the spot.

3. It is contended by learned counsel for the applicant that there is malafide on the part of the police as the applicant has been falsely implicated in the subject crime with an ulterior motive ; the alleged recovery has been foisted upon the applicant ; there is no independent witness of the alleged crime ; there is a family dispute between the applicant and his father due to which his father has implicated him in two false cases of the same nature i.e. the subject crime and Crime No.351/2021 ; due to this reason, the case set up by the prosecution has become doubtful ; the applicant has been granted bail in Crime No.351/2021 ; the matter requires further inquiry ; the applicant has no previous criminal record ; 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. It is further contended by the learned counsel that the case of Bilal Khan V/S The State, 2021 SCMR 460 was wrongly applied by the learned trial Court while dismissing the bail application of the applicant as in the said case 1,200 grams of ice was recovered.

4. On the other hand, learned Addl. P.G. contends that the FIR clearly shows that a substantial quantity of charas was recovered from the applicant which was immediately seized and sealed on the spot ; the role of the applicant in relation to the commission of the subject offence is specific and clear in the FIR ; there was no delay in lodging the FIR or in sending the narcotic substance recovered from the applicant for chemical examination ; and, the report submitted by the Chemical Examiner supports the case of the prosecution. The allegation of malafide and ulterior motive on the part of the police officials has been specifically denied by the learned Addl. P.G. It is further contended by him that 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 Addl. P.G. and have carefully examined the material available on record including the test report submitted by the Chemical Examiner after examining the charas allegedly recovered from the applicant. According to the aforementioned test report, the gross weight and net weight of charas was 1,240 grams and 1,228 grams, respectively. The charas (cannabis) 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 thereof marginally exceeds the maximum limit of one kilogram (1,000 grams) prescribed in Clause (b) of Section 9 *ibid*. Therefore, this case can be treated as a borderline case between Clauses (b) and (c). The contention of the learned counsel for the applicant that the case of *Bilal Khan* (*supra*) was wrongly applied by the learned trial Court while dismissing the bail application of the applicant appears to be correct as it was a case where 1,200 grams of ice was recovered which falls within category (ii) specified in Clause (s) *ibid*, and the maximum limit thereof prescribed in Clause (b) *ibid* is only 50 grams.

6. It is a matter of record that the applicant has been granted the concession of bail by the learned trial Court in Crime No.351/2021 wherein 1,195 grams of charas was allegedly recovered from him. The applicant is behind the bars since the date of his arrest i.e. 21.09.2021. His guilt or innocence 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. The applicant has specifically alleged malice on

the part of the police and that he has been implicated in the subject crime at the behest of his father. In the above circumstances, this is a case which requires further inquiry, and as such the applicant has made out a case for the grant of bail. 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.

7. In view of the above, the applicant is admitted to bail subject to his furnishing solvent surety in the sum of Rs.50,000.00 (Rupees fifty thousand only) and a P.R. bond for the same amount to the satisfaction of the learned trial Court. The instant bail application stands disposed of in the above terms.

J U D G E