

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No.2366 of 2021

Date

Order with signature of Judge

For hearing of Bail Application.

18.01.2022

M/s. Arshad Khan and Muhammad Amir Meraj, Advocates for the Applicant.

Mr. Zafar Ahmed Khan, Addl. P.G, Sindh.

ORDER

Muhammad Saleem Jessar, J:- Through this bail application, Applicant Haseeb seeks his release on post-arrest bail in Crime No.344/2021 registered with Pak Colony, Karachi, under Sections 6/9-C CNS Act 1997. The case after thorough investigation has been challaned by the police on 04.12.2021 which is now pending for trial before the Court of Additional Sessions Judge-I/Model Criminal Trial Court, Karachi (West) vide Session Case No.Nil [re-The State vs. Haseeb s/o Muhammad Asghar Khan]. The Applicant preferred his bail plea before the learned trial Court which by means of order dated 03.12.2021 was declined; hence instant application has been maintained.

2. Since, the fact of the prosecution case are already mentioned in the impugned order as well as FIR, therefore, there is no need to reproduce the same.

3. Learned counsel for the Applicant submits that 1120 grams of Charas shown to have been recovered from him which comes within the ambit of borderline. He next submits that it is also not mentioned whether contraband was net or gross weighted; therefore, Applicant is entitled for bail. In support of his contention, he places reliance upon the cases of "*Sagheer Ahmad Vs. The State and another (PLJ 2021 Cr. C. (Note) 3), Aya Khan and another Vs. The State (2020 S.C.M.R 350).*"

4. On the other hand, learned Addl. P.G, Sindh, appearing for the State, opposes the bail application on the ground that challan has been filed; besides, the quantity shown to have been recovered from him is 1120 grams of Chars; hence, he is not entitled for bail.

5. **Heard arguments and perused record.** The quantity of 1120 grams of Charas marginally exceeds limit of 1000 grams and whether the recovery of substance did exceed the limit between 900 grams to 1500 grams, is a question which is yet to be determined by the trial Court after recording evidence of the prosecution witnesses. It is settled law that at the bail stage, deeper appreciation of evidence cannot be gone into and only it is to be seen as to whether Applicant

is prima facie connected with commission of the offence or not. In the instant case, only 1120 grams of Charas was allegedly shown to have been recovered from the Applicant. It has been constant view of the superior Courts that in cases where recovery of narcotics substance does not exceed limit between 900 to 1500 grams, it could be held safely that the case being of borderline between clauses (b) and (c) of Section 9 of Control of Narcotics Substance Act, 1997. Therefore, invariably in all such like cases the applicant(s) had been admitted to bail. Moreover, the alleged contraband has not been specified by the prosecution whether it was got weighed without polythene bag or along with polythene bag, therefore, accurate-cum-actual weight of the contraband is yet to be determined by the trial Court after recording evidence of prosecution witnesses as well as chemical report to be submitted by the prosecution. In case of Aya Khan and another Versus The State 2020 SCMR 350 (supra) while granting bail to the Petitioner, Hon'ble Supreme Court of Pakistan has observed as under;_

"3. Without discussing the merits of the case lest it prejudice the case of one or the other side, suffice it to say that in the FIR or in the recovery memo, no where it is stated that whether it was net or gross weight of the narcotics and in this eventuality it becomes a border line case between subsections (b) and (c) of section 9, C.N.S.A., 1997. Thus the benefit of doubt in this aspect shall go to the accused. In view of the principle of law laid down in the case of Manzoor and 4 others v. The State (PLD 1972 SC 81)."

Same is the position of instant case.

6. Accordingly and in view of above, present case appears to be a borderline case which attracts provisions of clauses (b) and (c) of section 9 of CNS Act, 1997, therefore, benefit of such discrepancy is required to be in favour of the Applicant. Hence; case of Applicant is purely covered by sub-section 2 to section 497 Cr.P.C and requires further enquiry. Consequently, instant Bail Application is hereby allowed; Applicant **Haseeb son of Muhammad Asghar Khan** shall be released on bail subject to furnishing his solvent surety in the sum of Rs.100,000/- (Rupees One Hundred Thousand Only) and P.R bond in the like amount to the satisfaction of the trial Court.

7. It is pertinent to mention that the observation(s) made hereinabove is/are tentative in nature and shall not prejudice the case of either party during trial.

8. The Criminal Bail Application is disposed of in the terms indicated above.

JUDGE