

IN THE HIGH COURT OF SINDH, AT KARACHI
Cr. Bail Application No. 2300 of 2021

Applicant : Muhammad Atif s/o Muhammad Baqi,
through Mr. Naveed Ahmed Baloch, Advocate

Respondent : The State, through Ms. Rahat Ehsan,
Additional Prosecutor General, Sindh

Date of hearing : 25.01.2021
Date of order : 25.01.2021

ORDER

ZAFAR AHMED RAJPUT, J:- Applicant/accused Muhammad Atif s/o Muhammad Baqi being failed to get the concession of post-arrest bail from the Court of Model Criminal Trial Court Malir, Karachi, vide order dated 26.11.2021, through this application seeks the same concession from this Court in Crime/FIR No. 526 of 2021, registered under Sections 6/9(c) of the Control of Narcotic Substances Act, 1997 (the "Act") at Police Station Ibrahim Hyderi, Malir, Karachi.

2. Allegation against the applicant is that, on 19.11.2021 at 05:00 a.m., he was arrested on a tip off, alongwith two others co-accused, by a police party headed by SIP Yousuf Ali on being found in his exclusive possession 1765 grams of charas at Rickshaw Stand, Ali Brohi Goth, Ibrahim Hyderi, for which he was booked in the afore-mentioned F.I.R.

3. Learned counsel for the applicant claims innocence and false implication of the applicant in the instant case. According to him, alleged recovery is doubtful being in violation of section 103, Cr. P.C, entitling the applicant to have favor thereof at bail stage. In his assumption, alleged recovery is a border line case between clause (b) & (c) of section 9 of the Act. In support of his contentious, learned counsel has relied upon the case of

Wajid alias Waji v. The State (2016 P Cr. L.J 831), *Taj Ali Khan v. The State* (2004 YLR 439) and *Saeed Ahmed v. State through P.G. Punjab and another* (PLJ 2018 SC 812).

4. On the other hand, recovery of the charas in huge quantity and red-handed arrest of the applicant; non-availability of private persons to act as mashirs due to early morning hours and non-existence of enmity with police party are the grounds of learned APG for the rejection of the instant application.

5. Heard. Record perused.

6. It reflects from the record that the alleged recovered charas from the possession of the applicant was sealed on the spot and sent to Chemical Analyzer for chemical examination. Positive report of Chemical Analyzer brings the case of the applicant within the scope of prohibition, contemplated by Section 51 of the Act. As per F.I.R., no private person was available to associate him to witness the alleged recovery and arrest of the applicant. Even otherwise Section 25 of the Act excludes the applicability of Section 103, Cr. P.C.; therefore, association of witnesses from the public is not mandatory in the cases registered under the Act. Applicant's claim with regard to his false implication is an issue that cannot be attended without going beyond the scope of tentative assessment, an attempt prohibited by law. Recovery of 1350 and 1500 grams of charas have been considered in the cited case-law as borderline case; however, with no stretch of imagination recovery of 1765 grams charas can be considered as borderline case. The huge quantity of charas allegedly recovered from the possession of the applicant can have devastating effect on the society. Prima facie, sufficient material is available with the prosecution to connect the applicant with the commission of alleged

offence and no case for granting bail to him on the ground of alleged benefit of doubt and/or borderline case has been made out; hence, instant bail application is dismissed, accordingly.

7. Needless to mention here that the observations made hereinabove are tentative in nature and the same shall not influence the trial Court while deciding the case of applicant on merit.

JUDGE

Athar Zai