

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No.65 of 2022

Date *Order with signature of Judge*

For hearing of Bail Application.

02.02.2022

Mr. Muhammad Shafqat, Advocate for the Appellant.
Mr. Talib Ali Memon, Assistant Prosecutor General, Sindh.

ORDER

Muhammad Saleem Jessar, J:- Through this bail application, Applicant Tahir seeks his release on post arrest bail in Crime No.593/2021 of P.S Ibrahim Hyderi, Karachi, under Section 6/9-C CNS Act. The applicant preferred his bail plea before the trial Court, which was turned down by means of order dated 06.01.2022; hence, he has approached to this Court through this Application.

2. Since the facts of the prosecution case are already mentioned in the impugned order as well as FIR, which are annexed with Court file, therefore, there is no need to reproduce the same.

3. Learned counsel for the applicant submits that the vehicle in question does not belong to the applicant and actually it is owned by one Shakir Ali, brother of co-accused Shaoib, who has been bailed out by the trial Court on 11.01.2022 (Annexure-G available at page-73 of the Court file). He next submits that actually the vehicle in question was driven by co-accused Shoaib; however, later his brother Shakir Ali in order to save skin of his brother co-accused Shoaib, had maneuvered a false authority letter in favour of the applicant whereby he was shown authorized to drive the vehicle in question throughout Pakistan. Next submits that alleged contraband was not shown to have been recovered from his exclusive possession; hence, case against him requires further inquiry. In support of his contention, he places reliance upon cases (i) *GUL MANAN Versus The STATE* (2021 SCMR 1804) and (ii) *MUHAMMAD ULLAH Versus THE STATE* (2009 SCMR 954).

4. On the other hand, learned Assistant P.G, Sindh opposes the bail application on the ground that applicant was the person who was driving vehicle from which the alleged contraband was secured. He; however, admits that said vehicle is registered in the name of one Shakir Ali, brother of co-accused Shoaib. Learned Assistant P.G, Sindh further admits that the police did not record statement of said Shakir Ali; however, have annexed copy of so called authority letter along with T.O Form dully issued in favour of said Shakir Ali.

5. **Heard arguments, record perused.** Since, the contraband shown to have been recovered from the vehicle, was not recovered from the exclusive possession of the applicant and that the vehicle in question belongs to one Shakir Ali, brother of co-accused Shoaib, who has not been examined by the police nor was arrayed as an accused. The accusation against applicant is yet to be established by the prosecution in the light of documents collected by the I.O during investigation which also requires proper appreciation as well as determination by the trial Court.

6. In the circumstances and in view of dicta laid down by the Hon'ble Supreme Court of Pakistan in Cases GUL MANAN Versus The STATE and MUHAMMAD ULLAH Versus THE STATE (Supra), I am of the view that case against applicant requires further inquiry within the meaning of sub-section 2 to section 497 Cr.P.C. Consequently, instant bail application is hereby allowed. Applicant **Tahir son of Ali Asghar**, shall be released on bail subject to furnishing his solvent surety in the sum of Rs.100,000/- (Rupees One Lac Only) and PR Bond in the like amount to the satisfaction of learned trial Court.

7. It need not to iterate that the observation(s) made hereinabove is/are tentative in nature and shall not prejudice the case of either party during trial. However, the learned trial Court may proceed against the Applicant, if he will be found misusing the concession of bail.

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

JUDGE