

IN THE HIGH COURT OF SINDH, AT KARACHI
Cr. Bail Application No. 2400 of 2021

Applicant : Waqas bin Hameed Khemani s/o. Abdul Hameed
through Mr. Muhammad Rehan, advocate

Respondent : The State, through Ms. Rahat Ehsan, Additional
Prosecutor General alongwith SIP Hameedullah
of P.S. Kalri, Karachi.

Date of hearing : 10.02.2022
Date of order : 10.02.2022

ORDER

ZAFAR AHMED RAJPUT, J:- Having been rejected his earlier bail application bearing No. 3959 of 2021 by the learned 1st Additional Sessions Judge/MCTC, Karachi-South vide order dated 28th October, 2021, the applicant/accused Waqas bin Hameed Khemani through instant Cr. Bail Application has sought pre-arrest bail in Crime No. 321 of 2021, registered under Section 6/9(c) of Control of Narcotic Substances (Sindh Amendment) Act,2021 at P.S. Kalri, Karachi. He was admitted to interim bail by this Court vide order dated 23rd December, 2021, now the matter is fixed for confirmation of interim bail or otherwise.

2. It is alleged that, on 19th October, 2021 at about 0320 hours police party of P.S. Kalri, Karachi headed by SIP Ghulam Hussain during patrolling in the jurisdiction found in suspicious condition two accused persons. Out of them, they apprehended one accused, namely, Zaman, who was found in possession of 450 grams of crystal, while other accused whose name was disclosed by the arrested accused as Waqas Memon succeeded to make his escape good throwing a packet on the ground containing 240 rams Ice and one 9 mm pistol, for which aforementioned F.I.R. was recorded.

3. Learned counsel contends that the applicant is innocent and has falsely been implicated in this case by the police; that the applicant having obtained diploma in electrical from Government College of Technology, Karachi has applied for B-Tech in electrical; that the applicant is assisting his father to run his business in the name and style of "*Khemani Marine & Industrial Services*" located at Fida Hussain Sheikh road, Daryaabad, Karachi; that about 5 days before lodging of the aforesaid F.I.R. ASI

Iqbal of P.S. Kalri came to applicant at his shop and took away his licensed pistol for verification and thereafter he was falsely implicated in two cases, the present one and the other being Crime No. 321 of 2021 registered under section 23(1)(a) of Sindh Arms Act, 2013; however, he has obtained bail in the other case from the Court of learned Additional Sessions Judge-VIII, Karachi-South vide order dated 29th October, 2021 (*copy of the said order is placed on record*); that nothing was recovered from the possession of the applicant; therefore, the guilt of the applicant requires further enquiry.

4. On the other hand, learned Additional Prosecutor General vehemently opposes this application on the ground that 240 grams of Ice has been recovered from the pocket thrown by the applicant, which was sent for chemical analysis and the report thereof is positive; that the alleged offence being carrying death sentence falls within the prohibitory clause of section 497 Cr.P.C.; hence, the applicant is not entitled for the concession of bail.

5. Heard learned counsel for the parties and perused the material available on record.

6. It is an admitted position that the applicant was not arrested by the police from the spot and his name was taken by co-accused Zaman in his statement during police custody. Such statement is inadmissible under section 38 of Qanun-e-Shahadat Order, 1984. It is surprising to note that the police party on government vehicle failed to chase the applicant and arrest him, who allegedly made his escape good by running in the street; hence, the guilt of the applicant requires further enquiry as envisaged under sub-section (2) of section 497 Cr.P.C.; therefore, the interim bail already granted to the applicant vide order dated 23rd December, 2021 is confirmed on the same terms and conditions.

Cr. Bail Application stands disposed of.

JUDGE