

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Criminal Bail Application No.S-572 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection
2. For hearing of main case

16.08.2021

Mr. Altaf Hussain Chandio, advocate for applicant.

Mr. Shawak Rathore, D.P.G.

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ORDER

KHADIM HUSSAIN TUNIO-J:- Applicant seeks his admission to post arrest bail in Crime No. 09 of 2021, registered u/s 9(c) of the Control of Narcotic Substances Act, 1997, registered at P.S Rajo Khanani.

2. It is alleged that police party headed by SIP Liaquat Ali of Police Station Rajo Khanani apprehended the applicant during patrolling on 18.04.2021 and from his personal search recovered 5 pieces of chars weighing 2460 grams, for which FIR was lodged against him.

3. Learned counsel for the applicants/accused has argued that the applicant is innocent and has been falsely implicated in this case by the police; that no private witness was associated with recovery proceedings; that the applicant/accused is neither previously convicted nor a hardened criminal; that the investigation is completed and the applicant/accused is no more required for further investigation; that the offence does not fall within the prohibitory clause of section 497 Cr.P.C. and as such the applicants/accused is entitled for bail.

4. Conversely, learned D.P.G has vehemently opposed the bail of the applicant / accused on the ground that applicant is named in the FIR and a considerable quantity of charas has been recovered from

his possession; that Section 103 Cr.P.C is not applicable in narcotics cases; that no enmity or ill-will is alleged by the applicant / accused. In support of his contentions, he has cited the case law reported in *2020 SCMR 1257*.

5. I have given due consideration to the arguments advanced by the learned Counsel for the applicant as well as learned D.P.G and perused the material available on the record.

6. It reveals from the record that applicant has been apprehended by the complainant and five pieces of Charas are alleged to have been recovered from his possession which on weighing became 2460 Grams. The punishment of such an offence falls within the prohibitory clause of Section 497 Cr.P.C. Section 51 of the CNS Act provides that bail shall not be granted to an accused person who is charged with an offence under this Act or under any other law relating to narcotics where the offence provides punishment of death. It is pertinent to mention that when the quantity of narcotics exceeds one kilogram, the case falls within the provision of Section 9(c) of CNS Act, 1997, for which the penalty being provided by law is of death or imprisonment for life. The discretion under Section 497 Cr.P.C cannot be exercised with regard to the offences punishable with death or imprisonment for life until and unless the Court at the very outset is satisfied that the charge stands against an accused appears to be false or groundless. In the case in hand, the police party has apprehended the accused along with recovery of 2460 grams of Charas. Although the case of *Ghulam Murtaza (PLD 2009 Lahore 362)* provides progressive punishment for recovery of narcotics based on quantity, the same is not relevant at bail stage and is not up for consideration as held by the Hon'ble Apex Court in the case of *Socha Gul v. the State (2015 SCMR 107)*.

7. So far the prosecution witnesses are concerned, suffice it to say that they have no enmity whatsoever with the applicant which would prompt them in indulging themselves to foist such a huge quantity of 2460 Grams of Charas upon him. The alleged

offence is an offence of heinous nature which falls within the prohibitory clause of Section 497 Cr.P.C. I am fortified by the case of *The State v Javed Khan (2010 SCMR 1989)*.

8. Further, the Honourable Apex Court was pleased to recall the bail granted to the accused by this Court while deciding *Criminal Petition No.41-K of 2018 (Re: the State, through Prosecutor General Sindh v. Ahmed Faraz)* in case of recovery of 2050 Grams. In the case in hand, the recovery of Charas from the applicant was effected to the extent of 2460 Grams and such offence alleged to have been committed by the applicant is against the society which is absolutely hazardous to the life of the people, as such, the case of the applicant falls within the prohibitory clause of Section 497 Cr.P.C.

9. For the foregoing reasons and keeping in view the law laid down by the Honourable Apex Court in the cases relied on supra, this Court is of the view that the applicant has failed to make out his case for grant of extraordinary relief of bail, therefore, the instant bail application was dismissed vide short order dated 16.08.2021. These are the reasons for the same.

10. Needless to mention here that the observations made hereinabove are tentative in nature and will not cause prejudice to the case of either part at the trial.

JUDGE