

IN THE HIGH COURT OF SINDH, AT KARACHI
Cr. Bail Application No. 14 of 2022

Applicant : Ashfaq Khan s/o Jamal Khan, through
Mr. Bakht Azam, advocate

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

Date of hearing : 18.02.2022
Date of order : 18.02.2022

ORDER

ZAFAR AHMED RAJPUT, J:- Applicant/accused Ashfaq Khan s/o Jamal Khan being unsuccessful to get the concession of post-arrest bail in Cr. Bail Application No. 5403/2021 from Model Criminal Trial Court/1st Additional Sessions Judge Malir, Karachi vide order, dated 09.12.2021, through this application seeks the same concession from this Court in Crime/FIR No. 460 of 2021, registered under Sections 6/9(c) of the Control of Narcotic Substances Act, 1997 (the "Act") at P.S. Bin Qasim, Karachi.

2. It is alleged that on 09.11.2021 at 09:00 a.m., on spy information the applicant was apprehended by a police party headed by SIP Subhan Ali on being found in possession of 1800 grams of charas, for which he was booked in the aforementioned F.I.R.

3. Learned counsel for the applicant contends that the applicant is innocent; he has falsely been implicated in this case and the alleged charas has been foisted upon him by the police; that despite prior information, police failed to associate any private mashir to witness the alleged recovery, which is in violation of section 103, Cr. P.C.; that the alleged recovery of 1800 grams charas is a borderline case between clause (b) & (c) of section 9 of the Act; hence, the applicant is entitled for the concession of bail on the ground of

further enquiry. In support of his contentions, learned counsel has relied on the case of *Asghar Ali v. The State* (2018 MLD 129) and *Bacha Khan v. The State* (2018 P Cr. L.J 467).

4. On the other hand, learned Addl. P.G. opposes grant of bail to applicant on the grounds that the applicant was arrested red-handed on being found in possession of charas in huge quantity and since no private witness was available, the police officials acted as mashirs; that the applicant did not claim an enmity with police.

5. Heard. Record perused.

6. It reflects from the record that the alleged recovered charas was sealed on the spot and sent to Chemical Analyzer for chemical examination on the very next day. Positive report of Chemical Analyzer brings the case of the applicant within the scope of prohibition, contemplated by Section 51 of the Act. 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. It has been observed by the Apex Court in the case of *Muhammad Noman Munir v. The State and another* (2020 SCMR 1257), while rejecting bail plea in a case of 1380 grams of cannabis with 07 grams of heroin, as under;

“Insofar as non-association of a witness from the public is concerned, people collected at the scene, despite request abstained to assist the law and it is so mentioned in the crime report itself, a usual conduct symptomatic of societal apathy towards civic responsibilities. Even otherwise, the members of the contingent being functionaries of the State are second to none in their status, with their acts statutorily presumed, prima facie, as intra vires.

7. 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. With no stretch of imagination recovery of 1800 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 further inquiry and/or borderline case has been made out; hence, instant bail application is dismissed, accordingly.

8. 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

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