

IN THE HIGH COURT OF SINDH, AT KARACHI
Cr. Bail Application No. 2425 of 2021

Applicant : Rasool Buksh @ Dado s/o Manzoor Magsi,
through Mr. Salahuddin Khan Gandapur,
advocate

Respondent : The State, through Mr. Miral Shah,
Additional Prosecutor General, Sindh

Date of hearing : 16.02.2022 & 21.02.2022
Date of order : 21.02.2022

ORDER

ZAFAR AHMED RAJPUT, J:- Applicant/accused Rasool Buksh @ Dado s/o Manzoor Magsi being failed to get post-arrest bail from the Court of Additional Sessions Judge-I, Karachi-West (Model Criminal Trial Court) vide order dated 30.11.2021, through instant application seeks the same relief from this Court in Crime/FIR No. 1000/2021, registered under sec. 6/9(c), Control of Narcotic Substances Act, 1997 (the "Act") at P. S. Peerabad, Karachi.

2. Allegation against the applicant is that, on 09.11.2021 at 1130 hrs., he was arrested on a tip off by a police party headed by SIP Ali Nawaz on being found in his possession 2200 grams of charas at Magsi Para, near F-11 Stop, Mian Wali Colony, for which he was booked in the afore-mentioned F.I.R.

3. The learned counsel for the applicant has mainly contended that the applicant is innocent and has falsely been implicated in this case due to the pending trial cases of the offences under section 489-F, P.P.C in different courts; that the place of incident is located in a thickly populated area, but police failed to associate any private mashir to witness the alleged recovery despite having prior information, which fact alone creates reasonable doubt in the guilt of the applicant; hence, the applicant is entitled for the concession of bail; that the applicant is behind the bars since the day of his arrest without

any trial as the police has failed to submit final challan against him. In support of his contentions, learned counsel has relied upon the case of *Nadir Hussain v. The State* (2021 M L D 1129).

4. On the other hand, learned Addl. P.G has resisted grant of bail to the applicant on the ground that he was arrested on being found in possession of huge quantity of charas; that the complainant attempted to make the private persons as mashirs but they refused; that the applicant has not alleged any enmity with the police officials for implicating him falsely in this case.

5. I have given due consideration to the arguments advanced by both the parties and also perused the material available on record.

6. Perusal of the record shows that charas weighing 2200 grams was recovered from the possession of the applicant, which 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. As per F.I.R., private persons did not cooperate to become witnesses in the case. 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. 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 due to pending trial cases under section 489-F, P.P.C is an issue that cannot be attended without going beyond the scope of tentative assessment, an attempt prohibited by law. Police earlier submitted interim challan for want of report of Chemical Examiner, later after receiving such report the I.O has submitted final challan report before the concerned Court of Judicial Magistrate. The huge quantity of charas allegedly recovered from the possession of the applicant may have devastating effect on the society. The case-law cited by the learned counsel for the applicant being on distinguishable facts, does not attract to the case of present applicant. Prima facie, sufficient material is available on record 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 has been made out; hence, instant bail application is dismissed, accordingly.

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

JUDGE

Athar Zai