

IN THE HIGH COURT OF SINDH, AT KARACHI

Cr. Bail Application No. 130 of 2022

Applicant : Muhammad Wali s/o. Shairaz Ali Khan, through
Mr. Fida Hussain Buriro, Advocate.

Respondent : The State, through Mr. Siraj Ali Khan,
Additional Prosecutor General.

Date of hearing : 22.02.2022
Date of order : 22.02.2022

ORDER

ZAFAR AHMED RAJPUT, J:- Through instant Criminal Bail Application, applicant/accused Muhammad Wali s/o. Shairaz Ali Khan seeks post-arrest bail in Crime No. 1048 of 2021, registered at P.S. Peerabad, Karachi under sections 6/9(c) of the Control of Narcotic Substances Act, 1997 (*the "Act"*). His earlier application for the same relief bearing No. 129 of 2021 was dismissed by the learned Additional Sessions Judge-VIII, Karachi-West (MCTC), vide order dated 12.01.2022.

2. As per F.I.R., on 25.11.2021 at 0045 hours, the applicant was arrested by a police party headed by SIP Ali Nawaz of P.S. Peerabad, Karachi on being found in possession of 2050 grams of Charas at Shahiabad graveyard, Frontier Colony, Karachi, for which he was booked in the aforesaid F.I.R.

3. Learned counsel for the applicant contends that the applicant is innocent and has falsely been implicated in this case; that nothing was recovered from possession of the applicant and the alleged recovery of charas has been foisted upon him; that the applicant was taken by the officials of rangers from his house on 24.11.2021 and his name was disclosed in the press release; that the applicant is confined in judicial custody since his day of arrest and police has submitted challan; hence, his custody is no more required by the police for further investigation; that the trial of the case is likely to take some time and the applicant cannot be kept behind bars for an indefinite period; that neither F.I.R. nor Charge-Sheet bears the Daily Diary Entry number under that the police party left

police station for patrolling; hence, the arrest of applicant and alleged recovery from his possession is doubtful, entitling him for its benefit at bail stage.

4. On the other hand, learned Additional Prosecutor General opposes the grant of bail to applicant on the ground that capital punishment has been provided for the alleged offence under the Act and sufficient evidence is available with the prosecution to connect him with the commission of alleged offence.

5. I have heard learned counsel for the parties and perused the material available on record with their assistance.

6. Perusal of the record shows that the applicant is confined in judicial custody since his day of arrest and police has submitted challan; hence, his physical custody is not required by the police for further investigation. Although the punishment under section 9(c) of the Act for possessing 2050 grams of Charas is up to death or imprisonment for life and section 51(1) of the Act lays down embargo on the Court not to grant bail in the offence, which is punishable with death, yet in the present case, it is an admitted position that neither in the F.I.R. nor in the final Charge-Sheet the Daily Diary Entry number has been mentioned under which the police party made departure from police station for patrolling, which is laps on the part of the prosecution creating reasonable doubt about recovery and authenticity of the police party's departure from police station has become fishy and thus made the case of prosecution of further inquiry. No reason exists for keeping the applicant behind the bars, when sufficient illegalities and irregularities have appeared in the case of the prosecution, which have created doubt in the prosecution story; benefit of which would go to applicant, who is in circumstances entitled to bail. Accordingly, the instant application is allowed, and in result thereof the applicant is admitted to post-arrest bail in aforesaid crime/offence subject to furnishing by him solvent surety in the sum of Rs.100,000/- (Rupees One Hundred Thousand only) and P.R. Bond in the like amount to the satisfaction of the trial Court.

7. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicant/accused on merits. However, in case the applicant misuses the concession of bail in any manner, the trial Court shall be at liberty to cancel the same after giving him notice, in accordance with law.

JUDGE

Athar Zai