

**IN THE HIGH COURT OF SINDH, AT KARACHI**  
**Cr. Bail Application No. 235 of 2022**

Applicant : Gul Muhammad s/o. Zahir Shah, through  
Mr. Muhammad Ibrahim Abro, advocate

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

Date of hearing : 22.02.2022  
Date of order : 22.02.2022

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**ORDER**

**ZAFAR AHMED RAJPUT, J:-** Applicant/accused Gul Muhammad s/o. Zahir Shah being abortive to get the relief of post-arrest bail from Model Criminal Trial Court/III<sup>rd</sup> Additional Sessions Judge, Malir, Karachi in Cr. Bail Application No. 5506 of 2021 vide order, dated 09.12.2021, through instant application seeks the same relief from this Court in Crime/FIR No. 768 of 2021, registered under sections 6/9(c) of the Control of Narcotic Substances (Sindh Amendment) Act, 2021 at Police Station Quaidabad, Karachi.

2. Allegation against the applicant is that, on 06.12.2021 at 12:30 a.m., he was arrested at Street No. 6 near Mustafa Masjid, Landhi, Karachi by a police party headed by SIP Sajid Mehmood of P.S. Quaidabad, Karachi on being recovered 1410 grams of charas, for which he was booked in the aforesaid F.I.R.

3. The 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 recovered charas has been foisted upon him to justify his illegal apprehension; that the place of incident is located in a highly thickly populated area but police failed to associate any private mashir to witness the alleged recovery despite prior spy information about selling of the narcotic substance, which fact alone creates doubt in a prudent mind about the guilt of the applicant, benefit whereof always goes in favour of the applicant even at bail stage; 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; hence, the applicant is entitled for the concession of bail.

4. On the other hand, learned Addl. PG resists 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 applicant has not alleged any enmity with the police officials for implicating him falsely in this case; 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 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 the recovered charas weighing 1410 grams was sealed on the spot and sent to Chemical Analyzer for chemical examination. 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. 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 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 rejected, 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