

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Application No. 588 of 2021

Applicant: Waroo son of Abdullah.
*Through Mrs. Humaira Nadeem
Rana, Advocate.*

Respondent: The State,
Through Ms. Rubina Qadir, D.P.G

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*Through Mrs. Humaira Nadeem Rana,
Advocate.*

Respondent: The State,
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Date of Hg: 20.04.2021
Date of order: 20.04.2021

ARSHAD HUSSAIN KHAN, J: This common order will dispose of above criminal bail applications as the same have arisen out of connected F.I.R.

2. The applicant/accused namely, Waroo son of Abdullah, through the above bail applications has sought post-arrest bail in the case bearing FIR No.197/2021 under Section 6/9-C C.N.S Act 1997, and FIR No.198 under section 23-1(a) Sindh Arms Act, both registered at Police Station Shah Latif Town, Karachi.

3. Brief facts, as narrated in the F.I.R. are that on 11.02.2021 at about 5:30 a.m. complainant S.I.P. Rana Zulfiqar along with his subordinate staff, namely, PC Maqarab Khan-8500, PC Muhammad Aslam-19437 and PC Saghir Ahmed-34350 were patrolling in the area in a police mobile. During patrolling spy information was received that one person standing at Peer Sarhandi Goth

Road, Charai Razzakabad is in possession of Charas. Upon such information, they reached at the pointed place and found him for the purpose of selling *Charas* along with weapon, when he saw police party he started running towards Nadi, however, they apprehended the said person. Upon inquiry, he disclosed his name as Waroo son of Abdullah, whose personal search was made in presence of the accompanied police personnel due to non-availability of private witness and one 9MM Pistol bearing No. AO44747 and on barrel written in English TISAS-TURKEY were recovered. On further search from his wearing kameez two loaded magazine 8/8 alive rounds, two mobile phones simple No.Vigo Tel and Q-Mobile Baton wala and cash of Rs. 240/- were also recovered and Charas weight through digital scale, found 1700 grams. When the accused was asked to show the license of weapon 9MM pistol he could not produce the same, hence the accused under section 23(i) A Sindh Arms Act with recovered Charas falls under Section 6/9-C Control of Narcotics Act, 1997. Thereafter, the accused was arrested and recovered Pistol as well as Chars were sealed separately and FIRs were registered.

4. Learned counsel for the applicant/accused submits that applicant/accused is innocent and has falsely been implicated in this case with ulterior motives by the complainant. Further submits that applicant/accused is working in Bari Textile Mills and was illegally arrested by the complainant from his house and demanded illegal gratification of rupees five lacs but upon refusal he was illegally confined by complainant on 10.02.2021 and booked the applicant/accused in the above crime. She further submits that upon recovery of two mobiles of Vigotel and Q Mobile, complainant deliberately has not mentioned mobile numbers of the applicant/accused in the FIR, which creates doubt and case requires further

inquiry. She also submits that IO collected CDR report in which last location was Goth Haji Sheedi Jokhio dated 10.02.2021 at 11.01 p.m. and there is no location showed in the CDR that applicant/accused was of the said incident place. Further submits that complainant has shown place of incident and recovery of charas at about 5.30 a.m. at Peer Sarhandi Goth, but CDR report clearly showed that applicant/accused was not available at that time, therefore, the recovery of chars and pistol is totally doubtful and requires further inquiry. She next submits that nothing has been recovered from possession of the applicant/accused and the same has been falsely foisted upon him. The alleged recovery was not sealed at the place of incident and the report of chemical analysis is also not available on the record of this Court. She submits that the place of occurrence is a thickly populated area but the complainant did not make any private person as mashir of arrest and recovery, which is sheer violation of Section 103 Cr.P.C. She submits that neither the applicant/accused is a hardened criminal nor involved in any criminal case, therefore, there is no chance of tampering with the prosecution witnesses and no apprehension of abscondence of applicant/accused. Lastly she prayed that the applicant/accused may be admitted to bail.

5. Learned D.P.G. for the State has vehemently opposed the bail application while arguing that the applicant/accused is named in the FIR with his specific role, arrested at the spot and the recovery has also been affected from his possession. Learned D.P.G. has further argued that the applicant/accused is also involved in the similar crime under C.N.S. Act 1997 and he is habitual offender and after release on bail in the previous crime committed the present crime, and as such he is not entitled to the concession of bail in the present case.

6. After giving careful consideration to the arguments of the learned counsel for applicant/accused and learned D.P.G, as well as perusal of the record, it appears that the applicant/accused is nominated in the FIR with specific role and further the applicant/accused was arrested on the spot and a contraband narcotics have been recovered from his exclusive possession.

7. Insofar as the contention of the learned counsel for the applicant/accused that no credible witness and private person was associated as Mashir in this case is concerned, the same is misconceived in as much as by virtue of Section 25 of the Act non-citing of public witness is not fatal to the prosecution case as section 103, Cr.P.C. has been excluded from its application in cases of narcotics. In this context, reference can be placed on a case of *Zulfiqar Ahmed vs. The State* [2006 SCMR 800]. Furthermore, the Hon'ble Supreme Court in the cases of *Muhammad Khan v. The State* [2008 SCMR 1616], *Tariq Mehmood vs. The State through Deputy Attorney-General, Peshawar* [PLD 2009 SC 39] has held that mere fact that the witnesses belong to police is no ground to discard their evidence. They are as good and respectable witnesses as other public witnesses and their statement cannot be discarded for the reasons that they were the police employees. Insofar as the contention of learned counsel regarding location of the applicant/accused as per the CDR is concerned the same cannot be taken into consideration at this stage as it would amount to a deeper appreciation of evidence, which is not permissible at bail stage.

8. In the instant case, it appears that the applicant/accused was arrested on the spot and a contraband narcotics have been recovered from his exclusive possession, which was tested positive by the

chemical examiner and the F.I.R. was promptly lodged on the same day. Further, there is no denial that the Applicant is previously involved in the similar nature of crimes which reflect. As regards the contention of the learned counsel for the applicant/accused that the case of applicant/accused does not fall within the prohibitory clause of section 497 Cr.P.C., the Honourable Supreme Court of Pakistan in the case of Anti-Narcotics Force through its Regional Director Commander, A.N.F. Rawalpindi v. Qasim Ali [2019 SCMR 1928], inter alia, held as under:-

“3.....Section 51 of the Control Narcotic Substance Act 1997 clearly ousts application of the provisions of section 497, Cr. P.C. to the cases under the Control Narcotic Substance Act 1997 and thus, any reference to subsection (2) of section 497, Cr. P.C by the High Court while admitting the respondent to bail was uncalled for.”

9. Although there is no denial of applicant's involvement in other cases of identical nature, yet it was argued that the applicant has not been convicted in the said case. Such contention of learned for the applicant is untenable in law, as applicant's involvement in another case of identical nature shows his inclination towards being a desperate character. Moreover, mere non-conviction of the Applicant/accused in the past for any crime is no ground by itself to release him on bail. Reliance in this regard can be placed on the case of Afzaal Ahmed v. The State [2003 SCMR 573].

10. It is settled that for deciding the bail application the court has to observe the tentative assessment and deeper appreciation of evidence is not required and it will not be fair to go into discussion about the merits of the case at this juncture. Reliance in this regard can be placed on the cases of Saleh Muhammad v. The State

[PLD 1986 Supreme Court 211] and *The State v. The Zubair and 4 others* [PLD 1986 Supreme Court 163].

11. In view of the foregoing, I am satisfied that on the basis of facts available on the record, the prosecution has succeeded in making out a reasonable case, which prima facie connects the applicant/accused with the possession of the narcotics substances as well as 9MM Pistol, which constituted offences under section 6/9-C of the C.N.S. Act, and under section 23 (i) A of the Sindh Arms Act, therefore, I am of the view that the applicant has failed to make out a case for grant of bail. Accordingly, the above bail applications are hereby dismissed.

12. Needless to state that the observations made in this order are of a tentative nature and only for the purposes of this bail application. Nothing herein shall affect the determination of the facts at the trial or influence the trial Court in reaching its decision on the merits of the case.

JUDGE