

**IN THE HIGH COURT OF SINDH CIRCUIT COURT,
LARKANA.**

Crl. Bail Appln. No. S- 127 of 2021.

Applicant(s): 1. Sabir Ali Khoso and 2. Abdul Rasool Bhatti, through Messrs Habibullah G. Ghouri and Muhammad Afzal Jagirani Advocates.

The State: Through, Mr. Muhammad Noonari, DPG.

Date of hearing: 30.07.2021.
Date of order: 02.08.2021.

ORDER

Adnan-ul-Karim Memon, J:-In principle, impugned herein is the order dated 17.3.2021 whereby post-arrest bail was refused to the applicants by the learned Special Judge (CNS), Jacobabad, in F.I.R No. 16/2021, registered with P.S City, Jacobabad for an offense punishable under section 9 (c) of Control of Narcotic Substances Act, 1997. The applicants have now approached this Court for post-arrest bail in the aforesaid crime.

2. The accusation against the applicants as outlined in the F.I.R is that on 19.02.2021, the applicants are stated to have been arrested along with 2000 grams of Chars from each applicant; such report of the incident was made on the same day by Assistant Sub-Inspector (ASI) Yar Muhammad Lashari of CIA Unit Jacobabad to the City Police Station District Jacobabad. The applicants being aggrieved by and dissatisfied with their unjustified arrest by Central Intelligence Agency (CIA) Police, preferred post-arrest bail before the learned Special Judge (CNSA) Jacobabad by filing Criminal Bail Application No.12/2021, which was, later on, dismissed vide order dated 17.03.2021 on the premise that they were found in possession of 2000 grams of Chars each at the date, time and place mentioned in the F.I.R. The applicants have now approached this Court for their admission on post-arrest bail.

3. M/S Habibullah G. Ghori and Muhammad Afzal Jagirani, learned counsel for the applicants, have argued with a vehemence that the prosecution story is unbelievable based on malafide intention and ulterior motives, just to rope the applicants in the narcotics case; besides the main reasons assigned in the memo of Application. They emphasized that nothing has happened as depicted by Police, neither alleged Charas has been recovered from the

possession of the applicants, nor such incident has happened as alleged by the complainant ASI Yaar Muhammad in the aforesaid F.I.R. Per learned counsel, the applicants are innocent and have falsely been implicated in the said case to settle the score. Per learned counsel, the alleged recovery of *Chars* was made from the possession of the applicants on 19.02.2021, whereas it is unknown whether the said alleged contraband was kept in safe custody or otherwise; and, even the alleged Chemical report was belatedly issued by the office of Chemical Examiner on 29.06.2021. Per learned counsel, the delay in receipt of the report of Chemical Examiner has made the case of applicants one of further inquiry. Learned counsel pointed out that nothing is available on record to substantiate that the applicants are involved in similar nature of cases previously; that the Prosecution Witnesses (PWs) are public officials, therefore, there is no likelihood of tampering with the prosecution evidence as such the applicants cannot be kept behind the bars for an indefinite period. Learned counsel further pointed that it is a settled principle of law that the bail cannot be withheld as a matter of punishment. Learned counsel further averred that ASI of CIA is not competent to conduct a raid and investigate the criminal case under the law and prayed for allowing the instant bail application.

4. Mr. Muhammad Noonari, learned Deputy Prosecutor General (DPG), has strongly controverted the defense put forward by the applicants as discussed supra and argued that the applicants are involved in the narcotic case, thus not entitled to the concession of bail. Learned DPG pointed out that FIR No.16/2021 was promptly lodged and the applicants were arrested on the same day along with recovery of 2000 kg *Chars* from each applicant. Rebutting the assertion of the learned counsel for the applicants about sending of *Charas* to chemical analyzer after (4) days and its dispatch to the police station, this factum could be attended by the trial Court after the recording of the evidence. Per learned DPG, the chemical report is positive. On the point of the safe custody of the case property in between the period, he submitted that this aspect needs a deeper appreciation of evidence and it is for the trial court to look into this aspect of the case after the recording of the evidence. He prayed for the dismissal of the instant bail application.

5. Before dealing with the merits of the respective contentions, it would be appropriate to refer to the guidelines given by the Honorable Supreme Court, while considering the application for grant of bail. The guidelines are that while

deciding a bail application this Court has to consider the facts of the case narrated in the FIR, statements recorded under Section 161 Cr.P.C., other incriminating material against the accused, nature, and gravity of charge and pleas raised by the accused. In this regard, I am fortified by the decision of the Honorable Supreme Court rendered in the case of *Shahzad Ahmed Vs. The State* [2010 SCMR 1221]. Keeping in view the above principle, the learned counsel for the parties has been heard and the record has been perused.

6. It is noted that the applicants have been mainly booked in this case under section 9(c) of the Control of Narcotics Substances Act, 1997. To constitute an offense under section 9(c), which provides that whoever contravenes the provisions of Sections 6, 7, or 8 shall be punishable with death or imprisonment for life, or imprisonment for a term which may extend to fourteen years and shall also be liable to fine. In the present case, the learned DPG has submitted that alleged recovery of narcotic was kept in safe custody, and the narcotics were sent to Chemical Examiner vide road certificate No.18 dated 22.02.2021 by SHO Police Station City Jacobabad; and, the letter dated 02.06.2021 issued by Senior Superintendent of Police Jacobabad to the Chemical examiner, prima facie shows that chemical examiner was timely approached, as per time fixed by the law, and requested for early handing over the Chemical report to the concerned Police Station for trial. Consequently, the Chemical report was dispatched vide letter dated 29.06.2021. Prima facie, plausible reason has been put forward by the learned DPG for the aforesaid factum of the case. Besides the above, the question of safe custody of recovered Chars and its safe transmission to the Chemical Examiner and subsequent dispatch, as per the letter discussed supra, could only be thrashed out at the time of recording of evidence by the learned trial Court. On the aforesaid proposition, I am guided by the recent decision of the Honorable Supreme Court in the case of *Bilal Khan Vs. The State* (2021 SCMR 460).

7. Pima facie, red-handed arrest of the applicants with a considerable quantity of a Narcotics Drugs as discussed supra, confirmed by a positive Chemical Examiner's report that brings the case of the applicants within the sphere of Prohibition, contemplated by section 51 of the Control of Narcotic Substances Act, 1997. Applicant's claim of false implication and other related grounds as raised hereinabove cannot be attended at this stage, without going beyond the scope of tentative assessment, that is prohibited by

law. As per available record, prima-facie, the view taken by the learned trial Court is not open to a disturbance at this point, till the evidence is recorded on the subject points.

8. For the aforesaid reasons, the instant bail application merits no consideration is dismissed. However, the learned trial court is directed to expedite the case; dispose of the same preferably within two months from the date of this Order; and, it is made clear that the direction given by this Court in bail matters may not be taken lightly and valid reasons are to be assigned if the same direction is not complied with as now it is well-settled law that “to have a speedy trial is the fundamental right of the accused being universally acknowledged”. Under the Criminal Procedure Code, a smooth methodology and Scheme for a speedy trial are provided whether it is held by the Sessions Court or Magistrate, in recognition of the said right of an accused person. This principle shall apply more vigorously to the trials before Special Courts, constituted under the CNS Act, or any other special law so that unnecessary delay, a much less shocking one in its conclusion is avoided in all circumstances. Any unreasonable or shocking delay in the conclusion of the trial, before Special Courts, would amount to the denial of justice, or to say, denial of fundamental rights to the accused, of speedy trial. On the aforesaid proposition. In this context, I am fortified with the decision rendered by the Hon’ble Supreme Court of Pakistan in the case of *Imtiaz Ahmed vs. The State* (2017 SCMR 1194).

9. Needless to mention that this is a tentative assessment for disposal of this bail application only, which shall not affect/ influence the trial of this case in any manner.

Judge