

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No. 1401 of 2021

Date	Order with signature of Judge
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For hearing of bail application :

13.09.2021 :

Syed Samiullah Shah Advocate for the applicant.
Ms. Amna Ansari, Addl. P.G. a/w SIP Riaz Ahmed of P.S. Aram Bagh,
Karachi.

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NADEEM AKHTAR, J. – Through this bail application under Section 497 Cr.P.C., the applicant / accused Usman son of Ahrar seeks admission to post-arrest bail in Crime No.380/2021 registered against him on 31.05.2021 at P.S. Arambagh Karachi under Sections 6 and 9(b) of The Control of Narcotic Substances Act, 1997 (**'the Act of 1997'**). The applicant / accused, along with co-accused Faisal son of Shahabuddin, had filed Criminal Bail Application No.2204/2021, which was dismissed by the learned 1st Additional Sessions Judge (Model Criminal Trial Court) Karachi South vide order dated 23.06.2021.

2. The case of the prosecution, as set up in the subject FIR, is that the complainant S.I. Muhammad Nadeem Haider Solangi of P.S. Arambagh Karachi, along with police constables Sohrab and Ghulam Muhammad, was patrolling the area in police mobile No.SP-1174 within the jurisdiction of the aforesaid police station ; when they reached Arambagh Park near Furniture Market which is about one kilometer from the above police station, they saw two suspicious persons on a motorcycle at around 1850 hours ; the said two persons were stopped by them who disclosed their names as Usman son of Ahrar (present applicant) and Faisal son of Shahabuddin ; the said two persons were thoroughly searched in the presence of the above named two police constables as no other person was willing to act as *mashir* / witness ; upon their personal search, an unnumbered T.T. pistol with loaded magazine and three live bullets was recovered from the front belt of the trouser of Usman and charas wrapped in a white plastic bag (*theli*) was also recovered from the right pocket of his trouser, which was found to be 140 grams according to the digital weighing scale ; from Faisal, an unnumbered T.T. pistol with loaded magazine and three bullets was recovered which was hidden in the rear belt of his trouser, and charas wrapped in a white plastic bag (*theli*) was recovered from the front pocket of his shirt which was found to be 110 grams according to the digital weighing scale ; both the above persons could not produce the license of the pistols recovered from them ; and, the pistols and charas recovered from them were seized and sealed on the spot and they were arrested.

3. This bail application has been filed only the present applicant / accused Usman ; and, a separate FIR bearing No.378/2021 was registered against him under Section 23(i)(a) of the Sindh Arms Act, 2013, for carrying an unlicensed pistol, which is not the subject matter of the instant bail application.

4. It is contended by learned counsel for the applicant that there is apparent malafide on the part of the police as the applicant has been falsely implicated in the subject crime with ulterior motive due to enmity ; the complainant party was trying to snatch the money which was being carried by the applicant in his wallet and upon his resistance, he was implicated in the subject crime ; despite the fact that the place of arrest of the applicant was a densely populated area, no independent witness was associated by the complainant party nor did they disclose the names of such independent persons who allegedly did not cooperate with them ; due to this reason the case set up by the prosecution has become doubtful and cannot be believed ; the alleged recovery has been foisted upon the applicant ; the charas allegedly recovered from him marginally exceeds the limit prescribed in Section 9(a) ; the prosecution has failed to disclose the quantity of charas sent for chemical examination ; the matter requires further inquiry ; the applicant has no previous criminal record ; and, there is no apprehension that the evidence will be tampered with or that the witnesses will be influenced by the applicant, or he will abscond if he is released on bail.

5. On the other hand, learned APG contends that the FIR clearly shows that charas was recovered from the applicant and it was immediately seized and sealed on the spot ; the role of the applicant in relation to the commission of the subject offence is specific and clear in the FIR ; and, there was no delay either in lodging the FIR or in sending the charas recovered from the applicant for chemical examination. The allegation of malafide and ulterior motive on the part of the complainant party / police officials, was specifically denied by learned APG. It was not disputed by her that this is a borderline case between clauses (a) and (b) of Section 9 of the Act of 1997, and the applicant does not have any previous criminal record.

6. I have heard learned counsel for the applicant and learned APG and have carefully examined the material available on record. According to the prosecution's own case, the applicant was intercepted by the complainant party at a densely populated and commercial public place in daylight during business hours at 1850 hours, and as such the said place could not be deemed to be deserted at the time of alleged crime. Despite this position, not a single private

and independent person was associated by them to act as a witness and the FIR does not specifically state as to how many persons were asked by them to act as witness and the names of such persons have also not been disclosed. The complainant party has alleged to have recovered only 140 grams of charas from the applicant, but the net and gross weight of charas has not been disclosed separately in the FIR. However, the report of the Chemical Examiner submitted by learned APG shows that the net weight of charas received by the Chemical Examiner was only 137 grams. Be that as it may, the weight of charas allegedly recovered from the applicant and/or examined by the Chemical Examiner marginally exceeds the limit of 100 grams prescribed in Section 9(a). Thus, this is a borderline case between clauses (a) and (b) of Section 9 of the Act of 1997, which requires further inquiry in my humble opinion.

7. The applicant is behind the bars since the date of his arrest i.e. 31.05.2021 and in the meantime the investigation has been completed and the challan has been submitted before the trial Court. No private or independent person was associated as *mashir* in this case and all the witnesses of the prosecution are admittedly police officials, and as such the prosecution will be responsible to procure their attendance at the trial. Thus, there is no question or probability that the evidence will be tampered with or that the prosecution witnesses will be influenced by the applicant if he is enlarged on bail. The offence alleged in the FIR does not fall within the prohibitory Clause of Section 497 Cr.P.C. nor has any material been placed on record to bring the alleged offence within the ambit of such prohibition. It is well-settled that in the circumstances above, particularly when the case is borderline between clauses (a) and (b) of Section 9 of the Act of 1997, concession of bail should be exercised in favour of the accused as a rule.

8. It is clarified that the observations made herein are tentative in nature which shall not prejudice the case of either party nor shall influence the learned trial Court in any manner in deciding the case strictly on merits in accordance with law.

9. In view of the above, the applicant Usman son of Ahrar is admitted to bail subject to his furnishing solvent surety in the sum of Rs.50,000.00 (Rupees fifty thousand only) and a P.R. bond for the same amount to the satisfaction of the learned trial Court. The instant bail application stands disposed of in the above terms.

J U D G E