

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No. 1327 of 2021

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

23.09.2021 :

Mr. Allah Bukhsh Narejo, advocate for the applicant.

Mr. Zafar Ahmed Khan, Addl. P.G. a/w SIP Zahoor Ahmed of
P.S. Shah Lateef Town.

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NADEEM AKHTAR, J. – Through this bail application under Section 497 Cr.P.C., the applicant / accused Fahad Nawaz son of Gul Nawaz seeks admission to post-arrest bail in Crime No.1114/2021 registered against him on 25.06.2021 at P.S. Shah Lateef Town Karachi under Sections 6 and 9(c) of The Control of Narcotic Substances Act, 1997 (**“the Act of 1997”**). The applicant / accused had filed Criminal Bail Application No.2805/2021, which was dismissed by the learned Ist Additional Sessions Judge (Model Criminal Trial Court) Malir Karachi vide order dated 09.07.2021.

2. The case of the prosecution, as set up in the subject FIR, is that during the patrolling of the area by the police party on the date and at the time and place mentioned in the FIR, 2,140 grams of charas (cannabis) was recovered by the police from the applicant which was seized and sealed on the spot.

3. It is contended by learned counsel for the applicant that there is malafide on the part of the police as the applicant has been falsely implicated in the subject crime with an ulterior motive ; the charas was allegedly recovered on 25.06.2021, but the memo in respect thereof was prepared by the investigating officer on 26.06.2021 and the sample was sent to the Chemical Examiner on 28.06.2021 ; because of the delay in sending the sample for chemical examination and also as there is no independent witness of the alleged crime, the case set up by the prosecution has become questionable and cannot be believed ; the co-accused Majid has been granted bail by the learned trial Court vide order dated 02.07.2021, therefore, the applicant is also entitled to such concession ; the matter requires further inquiry ; the applicant has no previous criminal record ; final charge sheet has been submitted before the trial Court ; and, there is no apprehension that the evidence will be tampered with or that the witnesses of the prosecution will be influenced by the applicant, or he will abscond if he is released on bail.

4. On the other hand, learned DPG contends that the FIR clearly shows that charas was recovered from the applicant which 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 ; there was no delay in lodging the FIR ; there was also no delay in sending the narcotics recovered from the applicant for chemical examination as the incident took place on 25.06.2021 (Friday) and the sample was sent for chemical examination on the next working day i.e. 28.06.2021 (Monday) as the laboratory was closed on account of public holiday on Saturday and Sunday ; the report submitted by the Chemical Examiner supports the case of the prosecution ; and, bail cannot be granted to the applicant merely on the ground that co-accused Majid has been granted bail as the quantity of charas recovered from the latter was half of that recovered from the applicant. The allegations of malafide and ulterior motive on the part of the police officials have been specifically denied by learned DPG. It is further contended by learned DPG that the offence committed by the applicant falls within the ambit of clause (c) of Section 9 of the Act of 1997, and accordingly it falls within the prohibitory clause of Section 497 Cr.P.C.

5. I have heard learned counsel for the applicant and learned DPG and have carefully examined the material available on record including the test report submitted by the Chemical Examiner after examining the charas allegedly recovered from the applicant. According to the aforementioned test report, the gross weight and net weight of charas was 2,140 grams and 2,124 grams, respectively. The charas (cannabis) allegedly recovered from the applicant falls within category (i) specified in clause (s) of Section 2 of the Act of 1997 substituted through The Control of Narcotics Substance (Sindh Amendment) Act, 2021, and the net weight thereof is more than double the maximum limit of one kilogram (1,000 grams) prescribed in clause (b) of Section 9 *ibid*. Therefore, this is not a borderline case between the said clauses (b) and (c). The charas allegedly recovered from the co-accused Majid was 1,020 grams, and bail was granted to him by the learned trial Court by treating his case as a borderline case as the said quantity marginally exceeded the maximum limit of one kilogram (1,000 grams). Thus, the case of the present applicant cannot be equated with that of the above named co-accused. *Prima facie*, there appears to be no delay in sending the sample for chemical examination in view of the explanation submitted by the learned DPG.

6. The punishment of the offence falling under clause (c) is death or imprisonment for life or imprisonment for a term which may extend to fourteen years. Thus, the prohibition contained in Section 51 of the Act of 1997 shall apply to this case, and it also falls within the prohibitory clause of Section 497 Cr.P.C. Therefore, the applicant is not entitled to the concession of bail and there appears to be no exception to this rule in the facts and circumstances of the instant case.

7. The above view is fortified by Muhammad Noman Munir V/S The State and another, **2020 SCMR 1257**, and Bilal Khan V/S The State, **2021 SCMR 460**. In the former case, 1,380 grams of cannabis and 07 grams of heroin were recovered from the accused, and in the latter case the quantity of the recovered ice was 1,200 grams. In both the said authorities, concession of bail was declined by the Hon'ble Supreme Court by holding that the prohibition embodied in Section 51 of the Act of 1997 was applicable thereto. It was also held in Muhammad Noman Munir (supra) that the non-association of a witness from the public and his non-cooperation was a usual conduct symptomatic of social apathy towards civic responsibility ; and, even otherwise the members of the contingent being functionaries of the State are second to none in their status, and their acts statutorily presumed, *prima facie*, were *intra vires*.

8. The guilt or innocence of the applicant is yet to be established as it would depend on the strength and quality of the evidence produced / to be produced by the prosecution and the defense before the trial Court. Therefore, 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 instant bail application is dismissed with direction to the learned trial Court to conclude the trial of the subject case within three (03) months strictly in accordance with law.

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