

IN THE HIGH COURT OF SINDH, AT KARACHI
Cr. Bail Application No. 667 of 2022

Applicant : Shah Muhammad s/o Hashmatullah,
through Mr. Waseem Saif Khoso, advocate

Respondent : The State, through Mr. Talib Ali Memon,
A.P.G.

Date of hearing : 26.04.2022
Date of order : 26.04.2022

ORDER

ZAFAR AHMED RAJPUT, J:- Applicant/accused Shah Muhammad s/o Hashmatullah being abortive to get the relief of post-arrest bail vide order, dated 09.03.2022, passed by the learned Sessions Judge Karachi-South in Cr. Bail Application No.1664/2021, through instant application seeks the same relief from this Court in Crime/F.I.R. No. 298/2021, registered at P.S. Kalari, Karachi, under sections 6/9(c) of the Control of Narcotic Substances (Sindh Amendment) Act, 2021 (**“the Act of 2021”**).

2. Allegation against the applicant is that, on 27.09.2021 at 0325 hours, he was arrested at Maripur Road near Crown Tyre Market, Karachi by a police party headed by SIP-Muhammad Siddique of P.S. Kalari, Karachi on being recovered 102 grams of heroin, 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 heroin has been foisted upon him to justify his illegal detention; that neither any sale transaction has been recovered from the possession of the applicant nor any purchaser has been arrested by the police; that the place of alleged incident is located in a highly thickly populated area but police failed to associate any private mashir to witness the alleged recovery despite availability of private persons, 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 A.P.G. resists grant of bail to the applicant on the ground that he was arrested on being found in possession of huge quantity of heroin; that the applicant has not alleged any enmity with the police officials for implicating him falsely in this case; that 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. Under Clause (s) of Section 2 of the Act of 2021 narcotic drug has been categorized in following two categories:

(i) *Category (i) coca leaf, cannabis and poppy straw;*

(ii) *Category (ii) cocaine, heroin, methamphetamine, midomafetamine and all manufactured drugs or any other substance, which Government of Sindh may, by notification in the official gazette, declare to be narcotic drug for the purpose of this Act; leaf, cannabis and poppy straw;*

(Emphasis supplied)

7. Section 9 of the Act of 2021 has substituted section 9 of the Control of Narcotic Substances Act, 1997, as under:

"9. Punishment for contravention of section 6, 6-A, 7 and 8.

Whoever contravenes the provisions of sections 6, 6-A, 7 and 8 shall be punished with--

(a) imprisonment which may extend to three years but shall not be less than six months, or with fine upto rupees one lac but shall not be less

than rupees fifty thousand, or with both if the quantity of psychotropic substance or controlled substance or narcotic drug **category (i)** is one hundred gram or less;

(b) imprisonment which may extend to seven years but shall not be less than three years and shall also be liable to fine upto rupees five lac but shall not be less than rupees one lac if the quantity of psychotropic substance or controlled substance or narcotic drug **category (i)** exceeds one hundred gram but does not exceed one kilogram, or if the quantity of narcotic drug **category (ii)** is fifty gram or less;

(c) death or imprisonment for life or imprisonment for a term which may extend to fourteen years and shall also be liable to fine which may be upto one million rupees, if the quantity of narcotic drug **category (i)** and **(ii)**, psychotropic substance or controlled substance exceeds the limit specified in clause (b):

Provided that if the quantity of narcotic drug category (i), psychotropic substance or controlled substance exceeds ten kilograms or narcotic drug category (ii), exceeds two kilograms, the punishment shall not be less than imprisonment for life." _

(Emphasis supplied)

8. Perusal of the record shows that the recovered heroin weighing 102 grams was sealed on the spot and sent to Chemical Analyzer for chemical examination and received on the very same day. 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.

9. The heroin 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.

10. 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

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