

IN THE HIGH COURT OF SINDH, AT KARACHI
Cr. Bail Application No. 664 of 2022

Applicant : Lal Rehman s/o Umer Khan, through
Mr. Waseem Abbas, advocate

Respondent : The State, through Ms. Abida Parveen Channar,
Special Prosecutor A.N.F.

Date of hearing : 16.05.2022
Date of order : 16.05.2022

ORDER

ZAFAR AHMED RAJPUT, J:- Through instant Criminal Bail Application, applicant/accused Lal Rehman s/o Umer Khan seeks post-arrest bail in Crime No. 22 of 2021, registered at P.S. A.N.F., Gulshan-e-Iqbal, Karachi under sections 6/9(c), 14 & 15 of the Control of Narcotic Substances Act, 1997 (*the "Act"*). His earlier application for the same relief in Special Case No. 73 of 2021 was dismissed by the learned Special Court No. 1 (Control of Narcotic Substances), Karachi, vide order dated 26.03.2022.

2. It is alleged that, on 22.09.2021 at 1630 hours, S.I. Imran Ali of ANF, Karachi arrested the applicant and co-accused Khana Gul from near Jamia Mosque Usman Ghani, adjacent Insaaf Kaanta, Chungi Chowk, Manghopir, Karachi on being recovered nine (9) kilograms of charas, for which they were booked in the aforesaid F.I.R.

3. Learned counsel for the applicant contends that the applicant is innocent and has falsely been implicated in this case by the A.N.F. with mala fide intention and ulterior motives; that no contraband article was recovered from applicant's possession; that the alleged recovered charas was weighed with plastic shopper and yellow solution tap; as such, there is no mention of net weight of the alleged charas; that the applicant was in fact arrested from Sultanabad; that there is no independent witness of the alleged incident despite the fact that the place of incident is thickly populated area and the A.N.F. had got prior information of the delivery of the alleged narcotics through informer; that

the chemical examiner's report has received with delay of two months; that the complainant is himself the investigating officer; that the applicant is confined in judicial custody since day of his arrest and A.N.F. has submitted challan; hence, his custody is no more required by the A.N.F. for further investigation; that the trial of the case is likely to take some time as the trial Court is lying vacant and the applicant cannot be kept behind bars for an indefinite period; hence, the guilt of the applicant requires further enquiry as envisaged under section 497(2), Cr.P.C.; entitling him for the concession of bail. In support of his contentions, learned counsel has relied upon the cases of *Muhammad Afzal and 2 others v. The State* (2012 MLD 220), *Mir Hassan v. The State* (2017 YLR Note 321), *Mst. Farzana v. The State* (2020 MLD 49), *Pervez Zaki v. The State through National Accountability Bureau, Balochistan, Quetta* (2017 P.Cr.L.J. 747), *Muhammad Nawaz v. The State* (2007 MLD 1846), *Akhtar v. The State* (2014 YLR 772), *Malang v. The State* (2017 MLD 303) *Nasir Aziz v. The State* (2020 YLR 1429), *Ali Khan v. The State* (2022 P.Cr.L.J. 690), *Imranullah and another v. The State* (2021 YLR 583), *Muhammad Sajid alias Shahid v. The State and others* (2014 YLR 383) and *Haji Abdul Qayyun v. The State* (PLD 1991 Federal Shariat Court 74).

4. On the other hand, learned Special Prosecutor A.N.F. opposes the grant of bail to applicant on the ground that the applicant is involved in a heinous offence, which carries capital punishment and sufficient evidence is available with the prosecution to connect him with the commission of alleged offence.

5. I have heard learned counsel for the parties and perused the material available on record with their assistance.

6. Perusal of the record shows that on the alleged day the complainant S.I. Imran Ali upon receiving spy information that co-accused Khana Gul would supply narcotics to applicant between 1630 to 1730 hrs. reached the pointed place with his subordinate staff where the applicant was already present. After 10

minutes, said co-accused came on a motor-cycle and handed over a sack to applicant. They both were apprehended by the ANF officials and seized the sack containing 09 packets of charas, each weighing 01 K.G, total 09 K.G. The applicant has been assigned specific role of receiving alleged recovered charas from said co-accused. Perusal of the record further shows that the representative samples of the alleged recovered charas were sealed separately on the spot and sent to Chemical Analyzer for chemical examination on the very next 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.

7. As regards the arguments of learned counsel for the applicant, it may be observed that non-mentioning the net weight of the charas is not fatal to the prosecution case. As per record, ANF deposited the samples with Chemical Analyzer on the very next day; however, proving report thereof with delay of alleged two months is not on the part of ANF, as it is not the function of the ANF to analyze the narcotics and issue report. Such delay may be explained in evidence by the I.O of the case. Law does not stipulate any prohibition in the cases registered under the Act on the ANF officer to become complainant of the

case and Investigating Officer, if he is witness of certain facts, unless his interest is shown to be obvious in falsely implicating the applicant. Learned counsel for the applicant is unable to point out any prejudice caused to applicant just because the complainant investigated the case. No enmity with the complainant has been suggested by the applicant. Personal interest of the complainant to rope the applicant falsely is not the case of the applicant. Applicant's claim with regard to his false implication, his arrest from Sultanabad and foisting of charas are the issues that cannot be attended without going beyond the scope of tentative assessment, an attempt prohibited by law. The huge quantity of charas 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 further inquiry has been made out. The case-law cited by the learned counsel for the applicant being on distinguishable facts does not advance the case of the applicant for the grant of bail; hence, instant bail application is rejected, accordingly.

8. Needless to mention here that the observations made hereinabove are tentative in nature and the same shall not influence the trial Court while deciding the case of applicant on merit.

JUDGE

Athar Zai