

**IN THE HIGH COURT OF SINDH, AT KARACHI**  
**Cr. Bail Application No. 727 of 2022**

Applicant : Shahid-Ullah @ Buneri s/o. Naimat-Ullah,  
through Mr. Ishrat Khan Yousufzai, advocate

Respondent : The State, through Mr. Faheem Hussain  
Panhwar, D.P.G.

Date of hearing : 11.05.2022  
Date of order : 11.05.2022

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**ORDER**

**ZAFAR AHMED RAJPUT, J:-** Applicant/accused Shahid-Ullah @ Buneri s/o. Naimat-Ullah being abortive to get the relief of post-arrest bail from learned VIII<sup>th</sup> Additional Sessions Judge/Additional Model Criminal Trial Court, Karachi-West in Cr. Bail Application No. 1366 of 2022 vide order, dated 31.03.2022, through instant application seeks the same relief from this Court in Crime/FIR No. 157 of 2022, registered at Police Station Mominabad, Karachi under sections 6/9(c) of the Control of Narcotic Substances Act, 1997 (the “Act”).

2. Allegation against the applicant is that, on 16.03.2022 at 04:30 a.m., he was arrested at Inner Street, Quaid-e-Awam Colony near Shahi Masjid, Orangi Town, Karachi by a police party headed by SIP Chaudhry Naveed Bakhtiar of P.S. Mominabad, Karachi on being recovered 1780 grams of charas, 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 by the complainant; that nothing was recovered from the possession of the applicant and the alleged charas has been foisted upon him to justify his illegal arrest; that as per F.I.R no sample from the alleged recovered charas was drawn for chemical examination; that the applicant was arrested from his house on 14.03.2022 and his brother sent applications to S.S.P. and DIG concerned regarding his illegal arrest through courier service; that no independent person has been associated to witness the alleged recovery, 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 already submitted challan; hence, he is entitled for the concession of bail.

4. On the other hand, learned D.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 charas; that capital punishment has been provided for the alleged offence under the Act; that applicant is involved in other similar type of cases; that sufficient evidence is available with the prosecution to connect the applicant with the commission of alleged offence; hence, he is not entitled to the concession of bail.

5. I have given due consideration to the arguments advanced by both the parties and also perused the material available on record.

6. Perusal of the record shows that the recovered charas weighing 1780 grams was sealed 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. Applicant's claim with regard to his false implication is an issue 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. Moreover, the applicant is also involved in Crimes No. 72/2018 & 522/2021 registered at P.S. Mominabad under section 6/9(b) & (c), respectively, of Control of Narcotic Substances Act, 1997. *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.

8. 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

*Athar Zai*