

IN THE HIGH COURT OF SINDH, AT KARACHI
Cr. Bail Application No. 641 of 2022

Applicant : Farooq s/o Ismail, through
Mr. Mian Ashfaq Ahmed, advocate

Respondent : The State, through Ms. Rahat Ehsan,
Additional Prosecutor General, Sindh

Date of hearing : 30.05.2022
Date of order : 30.05.2022

ORDER

ZAFAR AHMED RAJPUT, J:- Applicant/accused Farooq S/o Ismail being abortive to get the relief of post-arrest bail in Bail Application No.392 of 2022 from the Court 1st Additional Sessions Judge Karachi-East vide order dated 31.01.2022, through instant application strives for the same relief from this Court in Crime No.1640 of 2022, registered under Sections 6/9(B) of the Control of Narcotic Substances Act, 1997 at Police Station Gulistan-e-Johar, Karachi.

2. As per F.I.R., on 28.11.2021 at 02:00 a.m., the applicant was apprehended by a police party headed by SIP Muhammad Shareef of P.S. Gulistan-e-Johar on being found in possession of 120 grams of heroin at outside the House No.206, Wonder Tower Benazir Basti, Block-11, Gulshan-e-Iqbal, Karachi, for which he was booked in the aforementioned F.I.R.

3. After hearing the learned counsel for the applicant and Addl. P.G. and perusing the material available on record with their assistance, it appears that the police has misapplied section 9(b) of the Control of Narcotic Substances Act, 1997, as the alleged offence after promulgation of the Control of Narcotic Substances (Sindh Amendment) Act, 2021 falls within the ambit of section 9(c) of the said Act, which provides punishment for possessing heroin exceeding 50 grams with death or imprisonment for life or imprisonment for a term which may extend to fourteen years and section 51(1) of

the Act lays down embargo on the Court not to grant bail in the offence falling under section 9(c) (ibid), yet in the present case, it is an admitted position that neither in the F.I.R. nor in the final Charge-Sheet, the Daily Diary Entry number has been mentioned under which the police party made departure from police station for patrolling, which is lapse on the part of the prosecution creating reasonable doubt about recovery and authenticity of the police party's departure from police station has become fishy and thus made the case of prosecution of further inquiry. Moreover, no reason exists for keeping the applicant behind the bars, when sufficient illegalities and irregularities have appeared in the case of the prosecution, which have created doubt in the prosecution story; benefit of which would go to applicant, who is in circumstances entitled to bail. Accordingly, the instant application is allowed, and in result thereof the applicant is admitted to post-arrest bail in aforesaid crime/offence subject to furnishing by him solvent surety in the sum of Rs.100,000/- (Rupees One Lac only) and P.R. Bond in the like amount to the satisfaction of the trial Court.

4. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicant on merits. However, in case the applicant misuses the concession of bail in any manner, the trial Court shall be at liberty to cancel the same after giving him notice, in accordance with law.

CrI. Bail application stands disposed of.

JUDGE