

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No.782 of 2022

Date *Order with signature of Judge*

For hearing of Bail Application.

19.07.2022

Mr. Muhammad Hanif Noonari, Advocate for the Applicant.
Ms. Rubina Qadir, Deputy Prosecutor General, Sindh.

ORDER

Muhammad Saleem Jessar, J:- Through this bail application, Applicant Ghulam Rasool @ Rasooli seeks his release on post arrest bail in Crime No.52/2022 of P.S Malir City, Karachi, under Section 6/9-C CNS Act, 1997. The applicant preferred his bail plea before the trial Court, which by means of order dated 11.03.2022 was declined; hence, this bail application.

Since the facts of the prosecution case are already mentioned in the FIR, which is annexed with Court file, therefore, there is no need to reproduce the same.

Learned counsel for the applicant submits that as per FIR applicant has been shown to have been arrested on 30.01.2022 and though the case has been challaned which is now pending for trial before a Model Criminal Trial Court, charge has also not been framed and the applicant is languishing in jail without progress in his trial. He further submits that the quantity of alleged contraband is 220 grams and the applicant is behind the bar since date of his arrest. He further submits that in identical case reported as *Abdul Qadir Versus The State (2022 MLD 469)*, learned Bench of this Court has granted bail to an accused from whose possession 680 grams of heroine was recovered and the case of applicant is on better footings than that of said accused Abdul Qadir who was granted bail by this Court. In support of his contention, he places reliance upon (i) *AMJAD KHAN Versus The STATE (2022 MLD 520)*, (ii) *NASIR AZIZ and another Versus The STATE (2020 YLR 1429)*, (iii) *AYA KHAN and another Versus The STATE (2020 SCMR 350)*, (iv) *QAMAR ZAMAN Versus The STATE (2017 YLR 874)* and submits that the applicant may also be extended grace of post arrest bail.

On the other hand, learned Deputy P.G, Sindh appearing for the State, opposes the grant of bail on the ground that after promulgation of Sindh Amendment Act, 2021, case against applicant does fall under the prohibitory clause of section 497 Cr.P.C. She; however, admits that police have not applied provisions of said Act rather have challaned the applicant under Section 6/9-C of CNS Act, 1997, therefore, case of the applicant falls within the ambit of section 9-C of CNS Act, 1997.

Heard arguments and record perused.

In case of Abdul Qadir (Supra), learned Bench of this Court while extending grace of bail to the applicant has held in para-5 of the order as under;_

5. I have heard the learned counsel for the parties and perused the material available on record. It appears from the record that 680 grams heroin was allegedly recovered from the possession of the applicant/accused and he was liable to be tried under section 9(b) of CNS Act, 1997, hence the case of the applicant/accused becomes one of further enquiry falling within the purview of section 497(2), Cr.P.C. Further, applicant/accused is behind the bars for last seven months and no progress has been made in the trial Court even charge has not been framed yet. The applicant/accused is no more required for further investigation. Reliance is placed in the case of Ateeb Ur Rehman alias Atti Mochi v. The State (2016 SCMR 1424) wherein the Hon'ble Supreme Court of Pakistan has held that:

"3 After hearing the learned counsel for the petitioner, learned Additional Prosecutor General Punjab and perusing the material available on record, we have noticed that when the petitioner was apprehended, 1014 grams of heroin was allegedly recovered from a shopper bag which he was carrying in his right hand. On Court query, the learned Additional Prosecutor General, after going through the recovery memo available on the file of police record, could not show that the recovered heroin was weighed along with the polythene bag or otherwise. If the recovered heroin was weighed along with the polythene bag, prima facie, the weight of the heroin without the polythene bag, if weighed, might have come to 1000 grams or less than that and in that eventuality, the case of the present petitioner would have fallen within the ambit of section 9(b) of the Control of Narcotic Substances Act, 1997. In this backdrop, the case of the petitioner becomes one of further enquiry falling within the purview of section 497(2) of the Code of Criminal Procedure."

In the light of existing circumstances and the law relied upon by counsel for the applicant, I am of the humble view that applicant/accused has been able to make out a good prima facie case of further inquiry within the

meaning of subsection 2 to section 497 Cr.P.C. Consequently, instant bail application is hereby allowed. Applicant **Ghulam Rasool @ Rasooli son of Ghulam Muhammad**, shall be released on bail subject to furnishing his solvent surety in the sum of Rs.100,000/- (Rupees One Lac Only) and PR Bond in the like amount to the satisfaction of learned trial Court.

It need not to iterate that the observation(s) made hereinabove is/are tentative in nature and shall not prejudice the case of either party during trial. However, the learned trial Court may proceed against the Applicant, if he will be found misusing the concession of bail.

This Criminal Bail Application is disposed of in the terms indicated above.

JUDGE

Zulfiqar/P.A