

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Crl. Bail Application No. 1309 of 2022

Date

Order with signature of Judge

For hearing of bail application.

16th August 2022.

Mr. Raza Mukhtiarkar Jawehery, advocate for the applicant/accused.

Mr. Muntazir Mehdi, Addl. P.G. Sindh.

Through instant bail application, applicant Zubair Ahmed seeks post arrest bail in Crime No.503/2022 registered at P.S Shah Latif Town for offences under Sections 6/9(c) of C.N.S. Act, 1997.

2. Precisely, the allegation of the prosecution against the applicant is that, on a tip-off, he alongwith co-accused was apprehended by the police party and from his possession ICE weighing 250 grams was recovered by them, which was sealed at spot in presence of mashirs, thereafter, accused and case property were brought at Police Station where the instant FIR was registered. After usual investigation he was sent up for trial.

3. Applicant moved post arrest bail application before the trial Court, but the same was declined vide order dated 26.05.2022, hence instant bail application has been preferred by the applicant/accused.

4. Learned counsel for the applicant, *inter alia*, contends that that there is malafide on the part of the police as the applicant has been falsely implicated in the subject crime with an ulterior motive and the alleged recovery has been foisted upon him; that no efforts were made by the complainant to associate an independent person to witness the arrest and recovery proceedings; that the allegedly recovered item was not sent for examination; the applicant has no previous criminal record ; and, there is no apprehension that the evidence will be tampered with or that the

witnesses of the prosecution will be influenced by the applicant, or he will abscond if he is released on bail.

5. Learned Deputy P.G. Sindh has vehemently opposed the bail application and contended that huge quantity of ICE (methamphetamine) was recovered from the possession of accused; the offence with which the applicant is charged falls within the prohibitory clause and is offence against society. With regard to the non-association of any inhabitant of the locality as a witness or mashir, he contends that as per section 25 of the Control of Narcotic Substances Act, 1997, the applicability of section 103, Cr.P.C. has been excluded in the cases of recovery of narcotics; that accused could not prove any enmity with the police as alleged, hence he prayed for dismissal of the instant application.

6. Heard and perused the record.

7. The case pertains to recovery of ICE (methamphetamine) weighing 250 grams which fall within category (ii) specified in Clause of Section 2 of the Act of 1997 substituted through The Control of Narcotics Substance (Sindh Amendment) Act, 2021. The quantity of ice allegedly recovered falls within the ambit of clause (c) of Section 9, which significantly exceeds the maximum limit prescribed therein. The punishment of the offence falling under clause (c) of Section 9 *ibid* is death or imprisonment for life or imprisonment for a term which may extend to fourteen years. Thus, the prohibition contained in Section 51 of the Act of 1997 shall apply to this case, and it also falls within the prohibitory clause of Section 497 Cr.P.C. It is pertinent to mention here that offences punishable under C.N.S Act of 1997 are by its nature heinous and considered to be the offences against the society at large and it is for this reason that the statute itself, as stated above, has provided a note of caution under section 51 of C.N.S Act of 1997 before enlarging an accused on bail in the ordinary course. Reliance could be made to decision given by the Hon'ble Supreme Court in the case of **Socha Gul v. State (2015 SCMR 1077)**. Moreover, the Hon'ble Apex Court in the case of **Muhammad Noman Munir v. The State and another (2020 SCMR 1257)** has observed that the non-association of a witness from

the public and his non-cooperation is a usual conduct symptomatic of social apathy towards civic responsibility; and, even otherwise the members of the contingent being functionaries of the State are second to none in their status, and their acts statutorily presumed, prima facie, are intra vires. So far as plea of applicant that ice was foisted upon him is concerned, same cannot be entertained at such stage as this fact as well as other assertions could only be ascertained after recording of evidence and at bail stage deeper appreciation of evidence is not permissible under the law. Thus, tentative assessment of material available on record, prima facie does not lead to a conclusion that there are no reasonable grounds exist to believe it is a case of further enquiry.

8. For the foregoing reasons, the bail application is dismissed. However, it is clarified that observations made in this order are tentative in nature and same shall not prejudice the case of either party. However, learned trial court is directed to conclude the trial expeditiously.

JUDGE