

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
Crl. Bail. Application No. 418 of 2021

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Date                                      Order with signature of Judge

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For hearing of bail application.

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16<sup>th</sup> April 2021.

Mr. Raheeluddin, advocate for applicant.  
MS. Abida Perveen Channer, Special Prosecutor ANF.

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Through instant bail application, applicant Fahad Naseer seeks post arrest bail in Crime No. 31 of 2020, under Sections 6/9(c), 14, 15 CNSA 1997, registered at P.S. ANF-Gulshan-e-Iqbal, Karachi.

2. Precisely relevant facts of the prosecution case is that on 22-12-2020 SI Muhammad Ihsan was present in police station, he received spy information that smuggler Babrak Baloch and Abdul Hameed through their agent namely Shahnawaz Baloch, Abdul Khaliq and Fahad Naseer would attempt to deliver huge quantity of narcotics ICE near Hascol petrol pump, Karachi Bus terminal Sohrab Goth, at about 2000 hrs. Upon such information, SIP constituted raiding party consisting of his subordinate staff left police station and reached at the pointed place at about 2000 hrs and found two persons while sitting on motorcycle and one person standing along with them and upon indication of informer, ANF officials apprehended all three persons and inquired names who disclosed their names as Shahnawaz Baloch, Abdul Khaliq and Fahad Naseer alias Minhaj Naqvi. On personal search of accused Shahnawaz, ANF officials recovered one black bag kept on fuel tank of motorcycle and recovered two packets and upon opening found 2 K.G ICE. Upon personal search of accused Abdul Khaliq, ANF officials recovered one packet containing 1500 grams ICE and from personal search of accused Fahad Naseer, ANF officials recovered one packet containing 1000 grams of ICE.

Samples were drawn for chemical examination and remaining ICE were sealed in presence of mashirs. Accused were arrested and motorcycle was seized by the ANF. Thereafter, accused, recovered narcotics and the motorcycle were brought at P.S where the aforesaid FIR was registered against them on behalf of State. After completion of usual investigation, challan was submitted before the Court of law.

3. Applicant moved post arrest bail application before the trial Court, but the same was declined vide order dated 13.02.2021, hence instant bail application has been preferred by the applicant/accused.

4. Learned counsel for the applicant, *inter alia*, contends that applicant is innocent and has been falsely dragged into the case due to malafide of ANF officials; that the case against the applicants falls within the section 9(b) of the CNS Act, 1997 and does not fall within the prohibitory clause of section 497 Cr.P.C; that though the alleged recovery has been effected near petrol pump but no private person has been associated to witness the recovery and arrest. He has placed his reliance upon the case laws reported as 2020 SCMR 431 and 2020 SCMR 350.

5. Learned Special Prosecutor, ANF opposed this bail application on the ground that huge recovery of ICE has been effected from the applicant and other co-accused and this is not an ordinary drug like other narcotic and the offence of the accused is against the society; that no enmity or ill-will has been pointed out against the ANF officials by the defence counsel, therefore, she prayed for dismissal of the instant bail application.

6. Heard and perused the record.

7. The offence with which the applicant is charged is an offence against society at large and is heinous in nature. Since the instant case involves *huge* quantity of narcotics and to have *criterion* for grant of bail in such like cases, it would be relevant to refer the case of Socha Gul v. State 2015 SCMR 1077 wherein it is *categorically* observed as:

“8. 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 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.”

8. Here in this case, applicant was arrested and huge quantity of ICE narcotic substance was recovered from him; prosecution witnesses have supported the prosecution case and *prima facie* there has been placed nothing on record to establish any *mala fide* or serious *enmity* against such ANF officials. In absence of *substantial* proof, the plea of enmity legally cannot be entertained at bail stage because such like *plea* is readily available but to make it substantial shall require proof, which, needless to add, could not be done at bail stage. With regard to the contention of the learned counsel for the applicant that no private person of the locality was associated as a witness or *mashir* though recovery was effected near petrol pump, it would suffice to say that in view of 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. The defects or irregularities could well be agitated but during trial and not at bail-stage. Plea of applicant that ICE was foisted upon him cannot be entertained at such stage as this fact could only be ascertained after recording of evidence. Needless to add that any *plea* which requires *deeper* examination and comments of nature, likely to prejudice to *plea / case* of either defence or prosecution, must always be avoided at bail-stage because criterion for tentative assessment and evaluation of evidence are completely different from each other. 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.

9. In the case of *Muhammad Akhtar v. State & Ors* 2017 SCMR 161, the honourable Apex Court dismissed the bail while holding as:-

“2. The petitioner had been apprehended red-handed while in possession of bhiki (poast) weighing 30 kilograms and a sample of the recovered substance had subsequently been tested positive by the Chemical Examiner. The prosecution has relied upon statements of some prosecution

witnesses who had witnessed the alleged recovery and apparently the said prosecution witnessed had **no ostensible reason to falsely implicate the petitioner** in a case of this nature. The case against the petitioner is **hit by section 51 of the Control of Narcotics Substances Act, 1997.** This petition is , therefore, dismissed and leave to appeal is refused.

10. As to the case law cited by the learned counsel for the applicant, in support of his submissions, the facts and circumstances of the said case is distinct and different from the present case, therefore, none of the precedents cited by the learned counsel are helpful to the applicant. In the mentioned circumstances, I do not find the applicant/accused entitled for bail at this stage of case. Accordingly, the bail plea is hereby dismissed. However, while parting the trial Court is directed to conclude the trial within a period of six months.

JUDGE

Sajid