

IN THE HIGH COURT OF SINDH, AT KARACHI
Cr. Bail Application No. 24 of 2022

Applicant : Amir Afzal s/o Muhammad Afzal, through
Mr. Khurrum Shahzad, advocate

Respondent : The State, through Mr. Siraj Ali Khan
Chandio, Additional Prosecutor General,

Date of hearing : 05.04.2022
Date of order : 05.04.2022

ORDER

ZAFAR AHMED RAJPUT, J:- Applicant/accused Amir Afzal S/o Muhammad Afzal being abortive to get the relief of post-arrest bail from the Court of Additional Sessions Judge-VIII, Karachi-West/MCTC in CrI. Bail Application No.6645/2021 vide order, dated 01.01.2022, through instant application seeks the same relief from this Court in Crime/FIR No.466 of 2021, registered under sections 6/9(c) of the Control of Narcotic Substances Act at P.S. SIU, Karachi.

2. It is alleged that on 04.12.2021 at 0020 hours, on spy information the applicant was apprehended by a police party headed by SIP Muhammad Waseem on being found in possession of 6070 grams of charas at main Manghopir Road, opposite Walika Hospital, Karachi, for which he was booked in the aforementioned F.I.R.

3. Learned counsel for the applicant contends that the applicant is innocent; he has falsely been implicated in this case and the alleged charas has been foisted upon him by the police; that the applicant was picked by the police from his house two days prior to lodging of F.I.R., for that his brother Irfan Afzal filed an application with S.H.O Saeedabad police station on 02.12.2021 and subsequently, he was illegally detained at police station for illegal gratification and on his refusal police officials falsely involved him in the above crime; that despite prior information, police failed to associate any private mashir to witness the alleged

recovery, which is in violation of section 103, Cr. P.C.; hence, the applicant is entitled for the concession of bail on the ground of further inquiry.

4. On the other hand, learned Addl. P.G. opposes grant of bail to applicant on the grounds that the applicant was arrested red-handed on being found in possession of charas in huge quantity and since no private witness was available, the police officials acted as mashirs; that the applicant did not claim an enmity with police.

5. Heard. Record perused.

6. It reflects from the record that the alleged recovered charas was sealed on the spot and sent to Chemical Analyzer for chemical examination. 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. Prima

facie, sufficient material is available with the prosecution to connect the applicant with the commission of alleged offence and no case for granting bail to him on the ground of alleged further inquiry has been made out; hence, instant bail application is rejected, accordingly.

8. Needless to mention here that the observations made hereinabove are tentative in nature and the same shall not influence the trial Court while deciding the case of applicant on merit.

JUDGE

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