

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
Crl. Bail Application No. 535 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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**04<sup>th</sup> May 2021**

Khawaja Muhammad Azeem , advocate for applicant.  
Mr. Faheem Hussain Panhwar, DPG alongwith PI/SIO Ahsan  
Ahmed Channa, P.S. Gulistan-e-Jauhar.  
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Through instant bail application, applicant seeks post arrest bail in Crime No. 327 of 2021, under Sections 6/9(c), Narcotics Act 1997, registered at P.S. Gulistan-e-Jauhar, Karachi.

2. Precisely, relevant facts of the case are that on 10.03.2021 police party of P.S. Gulistan-e-Jauhar, headed by HC Mumtaz, was busy in patrolling of area. It was about 0100 hours when the police party reached at Gull Chowk, Block-8, Gulistan-e-Jauhar, Karachi East, they on suspicious apprehended one person, who on inquiry disclosed his name as Waqar Hussain son of Tasdeeq Hussain Bangash. The police conducted his personal search one white colour shopper from which charas weighing 2000 grams were recovered. Charas was sealed separately at spot and accused was arrested in presence of mashirs. Thereafter, case property and accused were brought at police station where complainant lodged the FIR against the accused on behalf of state under the above referred sections. Thereafter after completion of usual investigation, challan was submitted before the Court of law.

3. Applicant moved post arrest bail application before the trial Court, which was dismissed vide order dated 26.03.2021 against which instant bail application has been preferred by the applicant/accused.

4. Learned counsel for the applicant/ accused has argued that applicant is innocent and has falsely and malafide been implicated as

father of accused being social worker moved several applications to concerned P.S. against narcotics sellers; that nothing has been recovered from the possession of accused and charas has been foisted upon the applicant/accused; that no efforts were made by the complainant to associate an independent person to witness the arrest and recovery proceedings; that complainant failed to send charas for chemical examination, that the punishment for offence alleged against applicant is less than ten years hence the case of the applicant requires further inquiry; he has relied upon 1969 SCMR 233 and PLD 1995 SC 34.

5. Learned Deputy P.G. Sindh has vehemently opposed the bail application and contended that huge quantity of Charas was effected 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 association of any respectable inhabitant of the locality as a witness or mashir, under 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 animity with the police as alleged, hence he prayed for dismissal of the instant application.

6. Heard and perused the record.

7. The offence of Narcotics 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. When we refer to the standards set out under section 497 Cr.P.C for grant of bail to an accused involved in an offence under section 9(c) of C.N.S Act of 1997, even on the basis we find that an accused **charged with an offence, prescribing various punishments, as reproduced above, is not entitled for grant of bail merely on account of the nature or quantity of narcotics substance, being four***

*kilograms. Firstly, as deeper appreciation of evidence is not permissible at bail stage and secondly, in such situation, looking to the **peculiar features and nature of the offence**, the trial Court may depart from the normal standards prescribed in the case of Ghulam Murtaza (supra) and award him any other legal punishment. Thus, in our opinion, ratio of judgment in the case of Ghulam Murtaza (supra) is not relevant at bail stage.*

8. Here in this case, applicant was arrested and huge quantity of 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 police officials. With regard to the contention of the learned counsel for the applicant that no private persons of the locality was associated as a witness or mashir though it was thickly populated area, is not attracting in view of section 25 of the Control of Narcotic Substances Act, 1997 by virtue of this provision, the applicability of section 103, Cr.P.C. has been excluded in the cases of recovery of narcotics. Plea of applicant that charas was foisted upon him cannot be entertained at such stage as this fact 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.

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 cases cited by the learned counsel for the applicant, in support of his submissions, the facts and circumstances of the said cases is

distinct and different from the present case, therefore, none of the precedent cited by the learned counsel are helpful to the applicant. In the mentioned circumstances, prima-facie, there are reasonable grounds to believe that applicant/accused has committed alleged offence, therefore, I am of the considered view that the learned counsel for the applicant has not been able to make out a case for grant of bail. The bail application being devoid of merit is **dismissed** accordingly.

12. Needless to mention that the above observations are purely tentative in nature and the same are only meant for the purpose of this bail application and would have no impact or effect on any party during the trial. Besides, trial court shall conclude the trial within six months.

J U D G E

Sajid