IN THE HIGH COURT OF SINDH AT KARACHI

Present : Omar Sial, J

Cr. Bail Application No. 323 of 2018

Applicant : Nazir Ahmed Mallah
through Mr. Reham Ali Rind, Advocate

Versus

Respondent : The State (none present)

ORDER

Nazir Ahmed was apprehended and arrested by a police party of the Thatta police station on 26-11-2017 while allegedly carrying 4 kilograms of charas in his car. An F.I.R. bearing number 247 of 2017 u/s 9(c) of the Control of Narcotic Substances Act, 1997 was registered against him the same day. Nazir Ahmed applied for post-arrest bail before the learned Court of Special Judge, CNS at Thatta, however, his application was dismissed on 15-2-2018. Being aggrieved by the order, Nazir Ahmed has now approached this court with a prayer that he may be enlarged on post arrest bail.

2. I have heard the learned counsel for the applicant. My observations are as follows.

3. The learned counsel submits that there was a violation of section 103 Cr.P.C. In this regard, section 25 of the CNS Act, 1997 explicitly excludes the applicability of section 103 Cr.P.C. in narcotic cases. Reference may also be made to Abdul Rashid vs The State (2009 SCMR 306).

4. The learned counsel has not denied that the recovery was made from the vehicle being driven by the applicant (though a contrary stance was taken before the learned trial court), however, he argued that the applicant was unaware of the charas in the car as he uses the car as a taxi and that the charas was being carried by a passenger who was let go of by the police as he was a Deputy Superintendent of Police. The learned counsel has failed to point out the identity of the said DSP. Be that as it may, whether or not the there was a DSP in the vehicle of the applicant who carried the narcotics

requires deeper appreciation of evidence. At this stage, it appears that the applicant, who acknowledges that the vehicle was his and was being driven by him, seems to have been apprehended alone while driving the car. Prima facie the narcotics were discovered from his possession.

5. The learned counsel has argued that there was a 2 day delay in sending the recovered narcotics for chemical analysis. The incident occurred on 26-11-2017 and the narcotics were received by the Chemical Examiner on 29-11-2017. Prima facie it seems that the narcotics were sent for analysis within 72 hours as required by Rule 4 of the Control of Narcotic Substances (Government Analysts) Rules 2001.

6. The learned counsel has argued that the provisions of section 20 and 21 of the CNS Act, 1997 were not complied with by the police. Section 20 CNS Act, 1997 empowers a Special Court to issue warrants of arrest and search. The learned counsel has been unable to explain how the said section is applicable to his case. Section 21 of the CNS Act, 1997 empowers a police officer not below the rank of Sub Inspector to, inter alia, search and arrest if a warrant for arrest or search cannot be obtained against a suspect without affording him an opportunity for the concealment of evidence or facility for this escape. Further, it also provides that in such an eventuality, before or immediately after taking any action, the officer shall record the grounds and basis of his information and proposed action and forthwith send a copy thereof to his immediate superior officer. In the present case the search and arrest appears to have been carried out by a Sub Inspector of Police and there is no evidence on record to suggest that the arresting officer did not inform his superiors.

7. The learned counsel has next argued that the departure entry of the police party is stated to be "19" on the memo of arrest and recovery whereas on the FIR it is shown as "10". Prima facie this argument of the learned counsel is not correct. In any case, this is an issue which requires deeper appreciation and cannot be used as a sole reason for grant of bail.

8. The learned counsel has argued that the engine number of the vehicle that the applicant was driving was shown as Z-502742 on the memo of arrest and recovery but that it is written as Z-502747 on the F.I.R. whether or not the discrepancy was intentional and what is its impact will have to be determined at trial. In view of the fact

that the learned counsel has not denied that the applicant was arrested from the vehicle he was driving and that the recovery was also made from the same vehicle, this argument of the learned counsel will not suffice for the grant of bail.

9. The learned counsel has argued that the entire narcotics seized was not sent for analysis. Prima facie, the chemical analysis report shows that the entire property weighing 4 kg was sent for analysis. He next argues that the memo of arrest and recovery does not show where the police party got the weighing scale from. With much respect to the learned counsel, such an omission would not entitle the applicant for grant of bail.

10. The learned counsel argues that the F.I.R shows that the charas was kept in a black shopping bag when it was recovered but the chemical analysis report shows that it was in a white bag. Prima facie this argument of the counsel is not correct. The chemical analysis report shows that it was a black plastic bag in which the charas was present. Perhaps, the confusion in the counsel's mind is the white bag in which the charas was sealed after recovery.

11. The learned counsel has argued that the applicant was arrested due to enmity with an A.S.I. of police who lives in the same locality as the applicant and with whom the applicant has a dispute over a plot of land. No evidence is available at this stage to substantiate the argument of the learned counsel. Learned counsel has linked this argument with his argument that he does not expect a fair investigation in the case as the complainant and the investigating officer is the same. There is no doubt that a better, fair and transparent practice would be to not have a complainant as an investigator but, in the absence of any malafide or ulterior motives, there appears to be no bar on the complainant police officer acting as investigator. Nonetheless, this is an issue, the impact of which will have to be determined at trial. Whether or not the entire case against the applicant is a false and fabricated one on the ground of enmity will have to be proved at trial.

12. Lastly, the learned counsel has argued that co-accused Abdul Ghaffar has been granted bail in the same crime and thus the applicant also deserves the same concession on the ground of consistency. I have noted that the learned trial court on 10-1-2008 granted bail to the said Abdul Ghaffar. Abdul Ghaffar was named by the

applicant as being the person from whom he had purchased the charas. Neither was Abdul Ghaffar present on the scene nor was any narcotics recovered from him nor is there any evidence to date that the allegation made by the application is correct. In view of the foregoing, the ground of consistency is not applicable to the applicant at this stage.

13. From the evidence that is available on record at this stage it appears that the applicant was apprehended red handed with 4 kilograms of charas lying under the driver seat of the vehicle which was being driven by the applicant. The entire property was sent for chemical analysis and the recovered substance was held to be charas, a prohibited substance under the law. In my opinion none of the grounds urged by the learned counsel are sufficient for the grant of bail to the applicant.

14. Above are the reasons for my short order of 19-4-2018 in terms of which the bail application was dismissed.

JUDGE