

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
Crl. Bail Application No. 1430 of 2022

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Date	Order with signature of Judge
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1. For orders on M.A.No. 8750/2022
2. For hearing of bail application

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Date of hearing: 01.11.2022  
Date of order: 01.11.2022

Mr. Mallag Assa Dashti, advocate for applicant  
Ms. Abida Parveen Channar, Special Prosecutor ANF a/w Inspector Abdul Rasheed of PS ANF, Korangi Karachi.

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**SALAHUDDIN PANHWAR, J.** Through the instant bail application, applicant Abdul Jalil seeks post arrest bail in Crime No.14/2022, registered at P.S ANF Korangi for offences under Sections 9(c), 14 & 15 of C.N.S. Act, 1997.

2. The brief facts of the case of prosecution as per FIR are that on 22.02.2022, at 1630 hours, Inspector Abdul Rasheed Dahari of P.S. ANF-II Muhammad Ali Society, Korangi Karachi, received spy information regarding delivery of huge quantity of charas by narcotic seller Naimat resident of Pasheen Balochistan, through his special agents Suleman and Naimatullah in Land Cruiser Parado bearing No. BF-9936 to his special customer near Farhan Hotel, Shahrah-e-Faisal, Karachi. Upon such information, Inspector Abdul Rasheed Dhahri along with his subordinate came there and stopped at Habib Metro Bank in front side of main Shahrah-e-Faisal, Karachi and on the poination of spy informer, stopped the said Land Cruiser and apprehended two persons namely Suleman son of Iftikhar Ahmed, driver of vehicle and Naimatullah son of Ghulam Habib and on interrogation they disclosed that narcotic is lying in the trolley bags as well as in secret cavities of vehicle. The complainant on search of the vehicle, secured two trolley bags viz. Mairon and blue colour from middle seat of vehicle and from them secured 40 packets of charas wrapped with yellow colour solution tape from each bag total 80 packets of charas whereas from

secret cavities of vehicle, 52 packets of charas were secured, total 152 packets of charas, which on weight became 158.400 kilograms. Four colour copies of armed license, running paper No. AAG-852 of vehicle and passport No. BT8704461 in the name of Abdul Jalil were also secured from the vehicle. After completion of legal formalities, accused and case property were brought at police station where FIR was lodged against them on behalf of state.

3. Learned counsel for the applicant *inter-alia* contended that the applicant is innocent and has been implicated falsely by the ANF officials; that recovery of the documents in the name of the applicant have been planted in order to involve him in present case; that involvement of the applicant on the basis of statement of co-accused is inadmissible under the law; that nothing has been recovered from the possession of the applicant; that all the witnesses are ANF officials, hence there is no apprehension of tempering the evidence, hence he prayed for grant of bail to the applicant.

4. Learned Special Prosecutor ANF vehemently opposed the bail application while contending that there was sufficient material on record to connect the applicant with the offense where huge quantity of charas has been recovered; that from the vehicle the copies of armed license, passport belonging to the applicant and photographs with the co-accused have been recovered; that the co-accused have also admitted that the applicant is the owner of the said narcotics; that call data record also establishes connection of the applicant with the co-accused and that no enmity or ill-will has been pointed out against the ANF officials to falsely implicate the applicant in this heinous offence, hence she prayed for dismissal of instant bail application.

4. Heard and perused record.

5. In the present case, according to the investigation, the applicant is last owner of the said vehicle wherefrom huge recovery of charas has been effected and in this respect a delivery letter of a showroom has been brought on record. Perusal of record reflects that the said vehicle is not in the name of the applicant, the ownership of the applicant of said vehicle

is yet to be determined at trial; the concession of bail cannot be withheld merely on the basis of a delivery letter issued by a showroom, which is yet to be proved at trial by the prosecution. With regard to the recovery of copies of armed licenses, passport of the applicant and photographs of the applicant with the co-accused, it is observed that no person of prudent mind would keep any document in a vehicle showing his identity where huge quantity of narcotics are being delivered particularly when prosecution claims that the applicant was following that vehicle in a separate car. In any event, merely recovery of said documents could not be made basis to connect the applicant with the present case at this stage. Admittedly, nothing has been recovered from direct possession of the applicant.

6. The applicant is implicated in the present case on the basis of the statements of co-accused stating therein that applicant is co-owner of the recovered property. However, the statements of the co-accused before the ANF officials cannot be considered as evidence against the applicant in view of the provision of **Article 38 of Qanun-e-Shahadat, Order, 1984**. In the case reported as *Raja Muhammad Younas vs. The State (2013 SCMR 669)*, the Hon'ble Apex court has observed that under Article 38 of Qanun-e-Shahadat Order, 1984, admission of an accused before police cannot be used as evidence against the co-accused. With regard to CDR, admittedly sim of cellular is not in the name of the applicant which is brought on record, it is without signatures and who had issued this CDR is a question of fact, which could only be determined at trial and at bail stage only tentative assessment is to be undertaken and no deeper appreciation is to be made. Nothing is forthcoming on record to show that the applicant has remained involved in similar cases in the past. Besides, prosecution case is that they received information that narcotics of narcotic dealer Naimat is going to transport heavy shipment of narcotic from Karachi to Quetta. Admittedly that alleged narcotic dealer is on interim pre-arrest bail.

7. It is now well settled that an accused cannot be kept in jail as punishment merely on the ground that he is directly charged for an offence falling under the prohibitory clause of section 497 Cr.P.C., because a mistaken relief of bail may be repaired by convicting the accused, if

proved guilty, but no proper reparation can be offered for his unjustified incarceration, albeit, his acquittal in the long run. Reliance is placed on case of *Zaigham Ashraf v. The State and others (2016 SCMR 18)*.

8. Tentative assessment of the material available on file suggests that applicant has made out a case for grant of bail. Accordingly, applicant is admitted to bail, subject to furnishing surety in the sum of Rs.500,000/- (Rupees Five Lacs only) and P.R bond in the like amount to the satisfaction of the trial Court.

9. These are the reasons for the short order announced on 01.11.2022. Needless to mention that the observations made above are purely tentative in nature which shall not prejudice the mind of trial Court while deciding the case on merits.

JUDGE

Sajid