

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Criminal Bail Application No.S-1215 of 2022.

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on office objections.
2. For hearing of main case.

Date of hearing: 26.12.2022.

Date of order: 30.12.2022.

Mr. Ghulamullah Chang advocate for the applicant.
Ms. Sana Memon, Assistant Prosecutor General.

ORDER

MUHAMMAD FAISAL KAMAL ALAM, J.- This is a bail after arrest application in Crime No.27/2022, u/s 9 (3) (c) of Control of Narcotics Substances (Amendment) Act, 2022, registered at PS Hala Old, District Matiari. According to gist of FIR, lodged on behalf of the State by ASI Maqbool Hussain Bijoro, that on 04.10.2022 at about 2230 hours, during patrolling, information was received that applicant/accused (Tayyab) is selling Charas on road at Bachao Band near Peeran Joon Landhiyon. Police officials reached at spot and apprehended the applicant/accused and recovered 10 big pieces of Charas in a shopper/bag, which on weighing were 2200 grams. Out of which 200 grams of Charas was sent for chemical examination. No public Mashir was available and therefore, Mashirnama of arrest and recovery was prepared by police officials.

Applicant's counsel has stated that narcotics is foisted upon the applicant/accused. He has referred to the application filed by wife of applicant/ accused (Mst. Bahgul) under Section 491 of CrPC before the Court, that her son and husband were arrested by CIA Police at Jugnoo CNG Station, after they attended Court proceedings in some other case. Learned counsel in support of his arguments has relied upon 2021 YLR Note 70 (Zohaib Ahmed versus The State), 2012 YLR 768 (Muhammad Hussain versus The State) and 2019 PCrLJ 134 (Muhammad Ashraf versus The State). Crux of case law is that, when record of old enmity is available and application under Section 491 CrPC was earlier filed; absence of private mashir dents the transparency of the alleged recovery of narcotics, coupled with the fact that there is no previous criminal record; investigation has been completed; consequently case of bail is made out although report of chemical examination is positive.

On the other hand, bail has been opposed by the learned APG on the ground that it is a huge quantity of Charas which in view of the recent amendment in the law, through Act No.XX of 2022 in the Control of Narcotics Substance Act 1997, a punishment of 14 years is mentioned which falls within the prohibitory clause of Section 497 CrPC. She has

cited the judgment of Hon'ble Supreme Court handed down in Noor Khan vs. The State, reported in 2021 SCMR 1212, wherein accused was caught red handed with 1320 grams of Cannabis, and bail was declined.

Arguments heard and record perused. It is necessary to point out that the connected Criminal Bail Application No.S-1216/2022 is filed by Arbab son of present Applicant/Accused. Both son and father have been arrested at different time and places, but on the same date. Present Applicant/Accused was arrested on 04.10.2022 at 2230 hours from Bachao Bund near Peeran joon Landhion Tehsil Hala, *whereas* his son Arbab was arrested on 04.10.2022 at 2100 hours from Waqar Garden Gate Hala. The Application filed by Mst. Bhagul (*ibid*) is of relevance, although was dismissed by the order dated 07.10.2022, because a report was submitted before the Court that Applicant and his son were not arrested or detained by CIA but they have been arrested by Police. Undisputed record shows that the above Application was filed on **04.10.2022**, during the Court hours and report was called and the matter was posted for 07.10.2022. On the same date in the night, that is, 04.10.2022, applicant/ accused was arrested.

The judgment cited by the learned APG is distinguishable, as in the said judgment there was no issue of earlier Court case, particularly an application under Section 491 CrPC, filed prior in time. Conversely, the case law relied upon by Applicants' counsel is relevant, wherein bail was granted, inter alia, considering the earlier Court case. Both male members of a family are behind bars who are bread earners. There is no record of earlier conviction. Guilt of accused is yet to be determined in the above circumstances, because at this stage a deeper appreciation of facts cannot be made. Investigation has been completed and Challan is submitted and applicant is not in a position to either interfere in the investigation or temper with the evidence. No useful purpose would be served by keeping the applicant/accused in jail. Non-availability of private Mashirs and sending the samples to the Laboratory for chemical examination after three days have to be satisfactorily explained by the prosecution, which is not done.

Consequently, this bail application is allowed and the applicant is extended concession of post-arrest bail subject to furnishing a solvent surety in the sum of Rs.50,000/- (Rupees fifty thousand) and PR Bonds in the like amount to the satisfaction of learned Trial Court. It is clarified that observations made in the foregoing paragraphs are of tentative in nature and will not influence trial in any manner whatsoever. However if applicant/accused attempt to misuse the concession of bail, then the learned Trial Court shall pass necessary orders.

J U D G E