

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Cr. Bail Application No. 1831 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGES
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For hearing of bail application.

22nd November, 2021

Mr. Muhammad Farooq, Advocate for applicant.

Mr. Khadim Hussain, Addl.P.G.

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Omar Sial, J: Muhammad Ajaan Khan has sought post arrest bail in crime number 348 of 2021 registered under sections 6 and 9(c) of the Control of Narcotic Substances Act, 1997. Earlier, his application seeking bail was dismissed by the learned 1st Additional Sessions Judge, Malir on 1-9-2021.

2. Facts of the case are that the aforementioned F.I.R. was registered on 8.7.2021 by S.I. Ali Akbar Sial of the Gadap City police station. He recorded that while a police party led by him was on patrol duty he received information about 2 persons selling narcotics. The police party reached the identified place where they saw 2 suspicious persons who attempted to flee upon seeing the police but were apprehended. The 2 persons disclosed their names as (i) the applicant and (ii) Asif. Both were arrested.

3. I have heard the learned counsel for the applicant as well as the learned Additional Prosecutor General. Their arguments are reflected in my observations and findings below.

4. The most glaring factual position in this case is that the arrest and recovery is said to have been effected at 4:00 p.m. on 8-7-2021. However, the F.I.R. in the case was not registered till 5:00 p.m. on 9-7-2021. Absolutely no reason is on record for this lapse. The learned Additional Prosecutor General was asked specifically to explain as to why the applicant was kept in what seems to be a prima facie illegal detention for a period of 1 day before the F.I.R. was lodged. He had no answer to give, let alone a cogent reason. Malafide on the part of the police in registering this case against the applicant appears apparent on a tentative assessment.

5. Learned counsel for the applicant has also argued extensively on the background of the case. He has explained that the applicant had a dispute with 2 Rangers officials by the name of Taimur and Malik Sardar. In the year 2018 for reasons known best to the Rangers officials the family of the applicant was being continuously harassed by the said Rangers officials. The Rangers officials had sought the help of the applicant in various cases and was threatened that if he does not comply he will be nominated in a case involving 15 kgs of heroin. The applicant declined to do so, so the Rangers officials had left threatening the applicant of dire consequences. The applicant in turn submitted complaints against the Rangers officials to the Director General Rangers Sindh as well as filed a petition in this regard (C.P. No. 2699 of 2018) against the said officials. As a consequence of the acts of the applicant, the learned counsel alleges, the Rangers officials did carry out their threat given to the applicant and a case was registered (F.I.R. No. 6 of 2018) against the wife of the applicant and one another for the possession of 15 kilograms of charas. The learned Special Court No. 1 CNS at Karachi granted bail to the applicant's wife on 23-4-2018 on the ground of it being a case of further inquiry. The learned Additional Prosecutor General while not denying the factual aspects of the case as argued by the learned counsel for the applicant has argued that the case against the applicant's wife has nothing to do with the case against the applicant and that a huge quantity of charas had been seized. While this aspect of the case will have to be proved at trial, at this preliminary stage, malafide on the part of the applicant and police on the ground of the past acrimony of the applicant and his family with the law enforcing agencies as well as the unexplained delay in registering the F.I.R. cannot be conclusively ruled out.

6. The police record reflects (handwritten cover letter) that the seized charas was sent for chemical analysis on 19-7-2021 and the hand written memo also bears a receiving stamp of the chemical analyser dated 26-7-2021. An unexplained typed cover letter is also on file which has a hand written date of 9.7.2021 on it and no receiving stamp of the laboratory. The report finally issued does not contain the date the narcotics were received by the laboratory. Prima facie it appears that the record may have been tampered with by the police. It is only the learned trial court which will take a conclusive decision on the same after evidence is led at trial.

7. While the alleged acrimony with the law enforcement agencies will have to be proved at trial, at this preliminary stage, the prima facie past acrimony of the applicant and his family with the law enforcing agencies as well as the unexplained delay in registering the F.I.R. and the prima facie lapses as to when the seized narcotics was sent for analysis as well as contradictory documents being on the police file, render the case of the applicant as one of further inquiry. He is accordingly admitted to post arrest bail subject to his furnishing a solvent surety in the sum of Rs. 100,000 and a P.R. Bond in the like amount to the satisfaction of the learned trial court.

JUDGE