

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Cr. Bail Application No. 1029 of 2021

DATE

ORDER WITH SIGNATURE OF JUDGES

For hearing of bail application.

22nd November, 2021

Mr. Zia Hussain Shah, Advocate for applicant.

Mr. Habib Ahmed, Special Prosecutor ANF.

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Omar Sial, J: Sher Zaman has sought post arrest bail in crime number 1 of 2021 registered under sections 6 and 9(c) of the Control of narcotic Substances Act, 1997 at the ANF Clifton police station. Earlier, his application seeking bail was dismissed on 29-4-2021 by the learned Special Court No. II (CNS) at Karachi.

2. Facts of the case are that the aforementioned F.I.R. was registered by S.I. Nawab Alam on behalf of the State on 8-1-2021. He recorded that on spy information the applicant was caught red handed while being in possession of 1000 g of heroin. 10 g of the heroin was sent for chemical analysis.

3. Learned counsel for the applicant has stressed primarily on the ground that the net weight of the recovered narcotics was less than 1000 grams and thus the case fell within the ambit of section 9(b) of the CNS Act, 1997. In addition, he argued that the complainant and the investigating officer of the case is same and that as spy information had been received, the complainant should have associated a private person to witness the arrest and recovery. Learned Special Prosecutor, ANF, on the other hand while agreeing that the net weight of the narcotic recovered is less than 1000 grams, opposed the bail on the ground that the recovered narcotic was heroin.

4. I have heard the learned counsel for the applicant as well as the learned Special Prosecutor, ANF.

5. No explicit denial of the recovery has been argued by the learned counsel for the applicant. It is not denied that section 25 of the CNS Act, 1997 excludes the applicability of section 103 Cr.P.C. and apart from this statutory provision, the Honorable Supreme Court too has in a number of cases reiterated the same.

Reference can be made to **Abdul Rasheed vs The State 2009 SCMR 306** as well as **Tariq Mehmood vs The State PLD 2009 SC 39**. Similarly, while not a preferred position, there is no legal bar on the complainant and the investigating officer to be the same person. Bail cannot be granted on this sole ground. I have given considerable thought to the argument that the sentence for an offence punishable under section 9(b) CNS Act, 1997 would fall within the non-prohibitory clause of section 497 Cr.P.C. and thus bail should be granted in accordance with the principle enunciated in the **Tariq Bashir and 5 others vs The State (PLD 2009 SC 34)**. The Tariq Bashir case also laid down that bail in a non-prohibitory clause case can be declined if there are any exceptional or extraordinary grounds. Heroin is a highly dangerous and addictive substance which has the potential of not only destroying the life of the user of the drug but also the lives of the people who are in close proximity of the user. No leniency can be shown to any person who deals in this particular form of narcotics. In my view while all narcotics are harmful, yet the lethal potency of heroin makes the possession of such a drug to fall within the exceptional grounds envisioned in the Tariq Bashir judgment (supra).

6. Prima facie it appears that the applicant was arrested red handed while being in possession of a substantial quantity of heroin. No malafide on the part of ANF for falsely accusing the applicant of the recovery has been pleaded. In view of the foregoing, the bail application is dismissed.

JUDGE