

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Cr. Bail Application No. 649 of 2022

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

22nd April, 2022

Mr. Shah Imroz Khan, Advocate for applicant.
Mr. Talib Ali Memon, A.P.G.

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Omar Sial, J: Muhammad Noman Khan has sought post arrest bail in crime number 171 of 2022 registered under sections 6 and 9(c) of the CNS Act, 1997 at the Sukhan police station in Karachi. Earlier, his application seeking bail was dismissed on 24.3.2022 by the learned 1st Additional Sessions Judge, Malir.

2. Facts of the case are that the aforementioned F.I.R. was registered on 11.3.2022 by S.I. Allah Dino Shar. Shar recorded that a police party led by him was on normal patrol duty when it received spy information that a person is transporting charas in a rickshaw for the purpose of selling. The police party reached the identified place where it stopped a suspicious rickshaw which was being driven by the applicant. He was searched and 1300 grams of charas was recovered from his possession.

3. I have heard the learned counsel for the applicant as well as the learned Assistant Prosecutor General. With their able assistance have gone through the available record. My observations and findings are as follows.

4. The learned counsel for the applicant has argued that nothing has been recovered from the possession of the applicant; that the rickshaw he drove was in his name; the alleged recovery of charas has been foisted upon him; that section 103 Cr.P.C. was not complied with and that this is a border line case. In support of his arguments, learned counsel has placed reliance on PLJ 2021 109 and SBLR 2021 Sindh 1171. Learned APG has supported the impugned order.

5. It is true that in many cases the courts have taken a lenient view when the quantity of narcotics was slightly above the one kilogram mark however after the decision of the Honorable Supreme Court in the case of **Bilal vs The State (2021**

SCMR 460) where such a ground was held to be presumptuous, it is not open for this court anymore to take a different view. Upon a tentative assessment, it appears that the applicant was apprehended red-handed in possession of charas whose net weight was more than one kilogram and thus falls within the ambit of section 9(c) of the Act of 1997. The recovered material was confirmed as being charas by the chemical analyst.

6. On a tentative assessment it appears that the applicant was arrested with the charas in his possession. Whether or not the owner of the rickshaw was also involved in the offence is up to the police to discover through investigation, however, the mere fact that the rickshaw was not owned but driven by the applicant in itself is not sufficient to absolve the applicant of any wrong doing. It is also the legal position that the application of section 103 Cr.P.C. is ousted by section 25 of the CNS Act 1997. No malafide on the part of the police has been pleaded nor is any reflected at this stage from the available record.

7. In view of the above, with much respect to the learned counsel for the applicant, he has failed to make out a case for grant of bail. This bail application stands dismissed.

JUDGE

