

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Bail Application No. 435 of 2022

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

11-05-2022

Syed Farooq Ahmed, Advocate for applicant.
Ms. Rahat Ahsan, DPG a/w SIP Azam Khan of P.S. Quaidabad.

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Omar Sial, J: Irfanullah has sought post arrest bail in crime number 79 of 2022 registered under sections 6 and 9(c) of the CNS Act, 1997 at the Quaidabad police station in Karachi. Earlier, his application seeking bail was dismissed on 28.2.2022 by the learned 1st Additional Sessions Judge, Malir, Karachi.

2. A background to the case is that the aforementioned F.I.R. was registered on 14-2-2022 by S.I. Sadruddin. He recorded that a police party led by him was on normal patrol duty when it received spy information that two persons are standing on a road and they are selling charas. Upon this information, police reached the identified place and arrested Nasir and Irfanullah (applicant) who was found to be in possession of 1200 grams of charas.

3. I have heard the learned counsel for the applicant as well as the learned Deputy 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 he will not press the ground that an application was made to Sukkan police station for disappearance of the applicant, he then goes to argue that 1200 grams of charas was seized whereas chemical analyser's report reveals 1188 grams of charas; that the alleged recovery of charas has been foisted upon him; that section 103 Cr.P.C. was not complied with; that this is a border line case; that there are contradictions in the 161 Cr.P.C. statements of prosecution witnesses and that there is no crime record of the applicant. Learned DPG has supported the impugned order.

5. On a tentative assessment it appears that the applicant was arrested with the charas in his possession. 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. The Hon'ble Supreme Court in a number of cases has held that a complainant can be investigating officer of the case provided no prejudice is caused. The same has not been argued by the learned counsel. The record reflects that the weight of charas which was seized was 1200 grams however the same was with packing and it appears that the reduction in weight of about 12 grams is on this account. 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. 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

