

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Bail Application No. 454 of 2022

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

18th April, 2022

Mr. Rashid Mehmood, Advocate for applicant.

Mr. Hussain Bux Baloch, Addl.P.G.

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Omar Sial, J: Wali Muhammad has sought post arrest bail in crime number 457 of 2021 registered under sections 6, 9-B and 9(c) of the Control of Narcotic Substances Act, 1997 at the Manghopir police station. Earlier, his application seeking bail was dismissed by the learned 8th Additional Sessions Judge, Karachi West on 17-7-2021.

2. Facts of the case are that the aforementioned F.I.R. was lodged by S.I. Syed Kashif Ahmed on 2-6-2021. He recorded that a police party led by him was on normal patrol duty when they saw two suspicious people. One was the applicant and the other was named Abdul Aziz. The two persons were apprehended and searched. Upon their search, 1700 grams of charas was recovered from the applicant whereas 200 grams of charas was recovered from Abdul Aziz. They were arrested and an F.I.R. was lodged against them.

3. The learned counsel for the applicant has argued that the samples were sent after five days to the chemical analyser; that the challan is delayed; that the applicant is in custody from 2-6-2021; that a description of the charas is not given in the F.I.R.; that there is violation of section 103 Cr.P.C.; that the story is unbelievable and that the applicant has no previous criminal record. In his arguments, learned counsel has relied upon (1) 2011 SCMR 820 (2) 2020 SCMR 350 and (3) 2017 P.Cr.L.J. 501.

4. Learned Addl.P.G. has opposed the grant of bail and has submitted that the issues raised by the learned counsel require deeper appreciation of evidence.

5. I have heard the learned counsel for the applicant as well as the learned Addl.P.G. and with their able assistance have gone through the record.

6. The Honorable Supreme Court has held in a case reported at 2011 SCMR 624 that the time frame of 72 hours in which the material seized is sent to the chemical analyst is directory in nature. At the moment the learned counsel has not submitted as to how the applicant was prejudiced in the prima facie late sending of the sample to the chemical analyst nor has he argued that the chain of safe custody was broken in the interim period. In any case the delay in sending the samples, if any, and its impact on the prosecution's case will be determined by the learned trial court after it has had an opportunity to analyse the evidence presented at trial. Section 103 Cr.P.C. is expressly excluded by section 25 of the CNS Act, 1997 and the learned counsel has not cited any judgment of the Honorable Supreme Court which has held otherwise. The fact that the applicant has no previous criminal record cannot form the sole ground for grant of bail. The other issues raised by the learned counsel tantamount to deeper appreciation of evidence at this stage.

7. Prima facie the applicant was arrested with a sizeable quantity of charas in his possession and such possession falls within the ambit of section 9(c) of the CNS Act carrying a potential sentence of life imprisonment and thus falls within the non-prohibitory clause of section 497 Cr.P.C. No malafide on the part of the police to falsely implicate the applicant has been argued by the learned counsel nor is any apparent on the face of the record.

8. In view of the above, the learned counsel has failed to make out a case for grant of bail hence the bail application stands dismissed.

JUDGE