

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Bail Application No. 569 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGES
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Hearing of bail application:

18th April, 2022

Mr. Muhammad Ibrahim Abro, Advocate for applicant.
Mr. Talib Ali Memon, A.P.G.

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Omar Sial, J: Fayaz Ali has sought post arrest bail in crime number 70 of 2022 registered under sections 6 and 9(c) of the CNS Act, 1997 at the Sharafi Goth police station. Earlier, his application seeking bail was dismissed on 07.03.2022 by the learned 1st Additional Sessions Judge, Malir.

2. Fayaz Ali and his companion Asfand Yar were arrested by S.I. Umer Hayat on 16.02.2022 and 1560 grams of charas were recovered from Fayaz Ali whereas 1120 grams was recovered from Asfand Yar.

3. Learned counsel for the applicant has not denied possession or the facts as stated in the F.I.R. but has only raised one argument that co-accused Asfand Yar has been granted bail and thus Fayaz Ali also deserves the concession of bail. The learned APG has supported the impugned order and has argued that Fayaz cannot be given the concession of bail on grounds of consistency as the reasons for grant of bail to Asfand Yar were very different.

4. I have heard the learned counsel for the applicant and the learned APG.

5. The applicant was prima facie apprehended red handed with 1560 grams of charas in his possession. No malafide on the part of the police to falsely implicate him has been argued nor does any appear on the face of the record. Being in possession of over one kilogram of charas carries a potential sentence of imprisonment for life and thus falls within the non-prohibitory clause of section 497 Cr.P.C. The entire seizure was sent for analysis and the chemical analysts report reflects that the material seized was charas. As regards the ground of consistency argued by the learned counsel, I am inclined to agree with the argument of the learned APG. Co-accused Asfand Yar was granted bail on the ground that at that stage it was not clear to the learned trial court whether the

net weight of the seized charas was above the one kilogram benchmark which divides the punishment for the offence of possession between section 9(b) and section 9(c) of the CNS Act, 1997. As an offence under section 9(b) carries a potential sentence of seven years, courts have historically shown some leniency in cases falling within the ambit of section 9(b). The present applicant's case is on a different footing as there is no confusion regarding the net weight of the seized charas.

6. In view of the above the bail application is dismissed.

JUDGE