

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH KARACHI**

Crl. Bail Application No. 78 of 2023

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**DATE**

**ORDER WITH SIGNATURE OF JUDGES**

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For hearing of bail application.

**14-02-2023**

Mr. Muneer Ahmed Khan, Advocate for applicant.

Ms. Abida Parveen Channer, Spl. Prosecutor ANF.

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**Omar Sial, J:** Abdul Bari has sought post arrest bail in crime number 28 of 2022 registered under sections 6 and 9(c) of the CNS Act, 1997 at the ANF Gulshan-e-Iqbal police station on 23.10.2022. Earlier, his application seeking bail was dismissed on 02.01.2023 by the learned Special Judge No.1 (CNS) Karachi.

2. A background to the case is that ANF received spy information that a huge consignment of charas will be delivered by a notorious drug smuggler named Irshad Khan and his aide Abdul Bari (the applicant) at an identified place on the Super Highway. ANF sleuths were present when the delivery was scheduled to be made. At 4:10 p.m., the applicant appeared on a motorcycle and was apprehended. 2.4 kgs of charas were recovered from his possession. He was arrested and the F.I.R. registered.

3. Learned counsel for the applicant has argued that the driver of the vehicle on which the ANF personnel had gone from their police station to the identified spot was not included as a witness. The chemical analyst was not included as a witness. Section 103 Cr.P.C. was violated. A call data record was not obtained; the applicant was actually an employee at the hotel near to which he was arrested and finally that he is 19 years of age. Learned Special Prosecutor ANF supported the impugned order. I have heard the counsels.

4. Prima facie the fact that the driver of ANF's vehicle was not included as a witness will not have any impact on the prosecution case and in any

case is hardly a ground for the grant of bail. Section 25 of the CNS Act, 1997 excludes the applicability of section 103 Cr.P.C. in cases covered by the narcotics legislation. Pursuant to section 510 Cr.P.C. the report of a chemical examiner may be used as evidence without calling him as a witness. Whether the applicant was an employee of the hotel where he was nabbed by ANF is something that will have to be proved at trial and in any case at this stage appears to be hardly a ground for grant of bail. At this stage the learned counsel has completely failed to provide any evidence to back up his argument.

5. Upon a tentative assessment it appears that 2.4 kilograms of charas was recovered from the sole possession of the applicant and that he was caught red handed with it. Samples of the seized material were sent for analysis and the chemical examiner has opined that the samples were that of charas. No ill will or enmity or malafide has been claimed or as a matter of fact is borne out from the record. The quantity of charas with which the applicant has allegedly been caught renders him open to a potential capital sentence thus his case also falls within the prohibitory clause of section 497 Cr.P.C.

6. Above are the reasons for the short order dated 10-2-2023.

JUDGE