

IN THE HIGH COURT OF SINDH, AT KARACHI
Cr. Bail Application No. 914 of 2023

Applicant : Mst. Aliya w/o Ayaz, through
Mr. G.M. Korai, Advocate

Respondent : The State, through Ms. Rahat Ehsan,
Addl. Prosecutor General, Sindh

Date of hearing : 07.06.2023
Date of order : 07.06.2023

ORDER

ZAFAR AHMED RAJPUT, J:- Applicant/accused Mst. Aliya w/o Ayaz being failed to get post-arrest bail from the Court of Additional Sessions Judge-IV/ Special Judge (CNS), Malir Karachi vide order dated 14.04.2023, through instant application seeks the same relief from this Court in Crime/FIR No. 305 of 2023, registered at P.S. Malir City, Karachi under sections 6/9(2) (5) of the Control of Narcotic Substances (Amendment) Act, 2022 (*the "Act of 2022"*).

2. Allegation against the applicant is that, on 02.04.2023 at 05:00 a.m., on spy information the applicant was arrested by a police party headed by SIP Muhammad Ilyas Tanoli on being found in possession of 610 grams of crystal at inside the street of Gharibabad, Malir City, Karachi, for which she was booked in the afore-mentioned F.I.R.

3. Learned counsel for the applicant claims innocence and false implication of the applicant in the case with mala fide intentions and ulterior motives. According to him, nothing incriminating material was recovered from the possession of the applicant and the alleged crystal was foisted upon her by the police, and since the place of arrest and recovery is located in a thickly populated area but police failed to associate any private mashir, the alleged recovery of narcotic drug being in violation of section 103, Cr. P.C. is highly doubtful and renders the case as of further inquiry entitling the applicant for the concession of bail.

4. On the other hand, recovery of the crystal and red-handed arrest of the applicant; non-availability of private persons to act as mashirs and non-existence of enmity with arresting police party are the grounds of learned A.P.G. for the rejection of the instant application.

5. Heard. Record perused.

6. Crystal is a new anathema and social abuse in our society. As per publication of National Drug Intelligence Centre, Washington, available at www.usdoj.gov/ndic, crystal methamphetamine or crystal meth is a colorless, odorless form of d-methamphetamine, a powerful and man-made highly addictive synthetic stimulant. Like powdered methamphetamine (*another form of d-methamphetamine*), crystal methamphetamine is abused because of the long-lasting euphoric effects it produces. It, however, typically has a higher purity level and may produce even longer-lasting and more intense physiological effects than the powdered form of the drug. The most common names for crystal are ice and glass. It is smoked using glass pipes similar to pipes used to smoke crack cocaine. It is also swallowed and may be injected with a needle and taken by snorting it (*inhaling through the nose*). Crystal is increasingly gaining popularity as a "party" and "club" drug.

7. Methamphetamine is defined under Clause (r-i) of Section 2 of the Control of Narcotic Substances (Sindh Amendment) Act, 2021 (*the "Act of 2021"*) as "*an addictive neurotoxic stimulant which is used as a recreational drug, having chemical formula C10 H15 N and includes ICE, Meth and Crystal*". Under Clause (s) (*ibid*) narcotic drug has been categorized in following two categories:

(i) **Category (i)** coca leaf, cannabis and poppy straw;

(ii) **Category (ii)** cocaine, heroin, methamphetamine, midomafetamine and all manufactured drugs or any other substance, which Government of

Sindh may, by notification in the official gazette, declare to be narcotic drug for the purpose of this Act;

8. Section 9 of the Act of 2021 has substituted section 9 of the Control of Narcotic Substances Act, 1997, as under:

*“9. **Punishment for contravention of section 6, 6-A, 7 and 8.** Whoever contravenes the provisions of sections 6, 6-A, 7 and 8 shall be punished with--*

*(a) imprisonment which may extend to three years but shall not be less than six months, or with fine upto rupees one lac but shall not be less than rupees fifty thousand, or with both if the quantity of psychotropic substance or controlled substance or narcotic drug **category (i)** is one hundred gram or less;*

*(b) imprisonment which may extend to seven years but shall not be less than three years and shall also be liable to fine upto rupees five lac but shall not be less than rupees one lac if the quantity of psychotropic substance or controlled substance or narcotic drug **category (i)** exceeds one hundred gram but does not exceed one kilogram, or if the quantity of narcotic drug **category (ii)** is fifty gram or less;*

*(c) death or imprisonment for life or imprisonment for a term which may extend to fourteen years and shall also be liable to fine which may be upto one million rupees, if the quantity of narcotic drug **category (i) and (ii)**, psychotropic substance or controlled substance exceeds the limit specified in clause (b):*

Provided that if the quantity of narcotic drug category (i), psychotropic substance or controlled substance exceeds ten kilograms or narcotic drug category (ii), exceeds two kilograms, the punishment shall not be less than imprisonment for life.” _

(Emphasis supplied)

9. In the instant case, it reflects from the record that the alleged recovered narcotic drug was sealed by the police on the spot and sent to Chemical Examiner for analysis on the very next day and his positive report brings the case of the applicant within the scope of prohibition, contemplated by Section

51 of the Act of 1997. As per F.I.R, no private person was available to associate him to witness the alleged recovery and arrest of the applicant. Even otherwise Section 25 of the Act of 1997 excludes the applicability of Section 103, Cr. P.C.; therefore, association of witnesses from the public is not mandatory in the cases registered under the Act of 1997. It has been observed by the Apex Court in the case of Muhammad Noman Munir v. The State and another (2020 SCMR 1257) that *“people collected at the scene, despite request abstained to assist the law and it is so mentioned in the crime report itself, a usual conduct symptomatic of societal apathy towards civic responsibilities. Even otherwise, the members of the contingent being functionaries of the State are second to none in their status, with their acts statutorily presumed, prima facie, as intra vires.*

10. Applicant's claim with regard to her false implication is an issue that cannot be attended without going beyond the scope of tentative assessment, an attempt prohibited by law. Prima facie, sufficient material is available on record to connect the applicant with the commission of alleged offence and no case for granting bail to her on the ground of alleged benefit of doubt has been made out; hence, instant bail application is rejected, accordingly.

11. Needless to mention here that the observations made hereinabove are tentative in nature and the same shall not influence the trial Court while deciding the case of applicant on merit.

JUDGE

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