

IN THE HIGH COURT OF SINDH, AT KARACHI
Cr. Bail Application No. 926 of 2023

Applicant : Sawal @ Sawan s/o Khamiso, through
Ms. Asma Mumtaz, Advocate.

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

Date of hearing : 08.06.2023
Date of order : 08.06.2023

ORDER

ZAFAR AHMED RAJPUT, J:- Through instant Criminal Bail Application, applicant/accused Sawal @ Sawan s/o Khamiso seeks post-arrest bail in Crime No. 179 of 2023 registered at P.S. Sohrab Goth under sections 9(1) 3 (B) of the Control of Narcotic Substances (Amendment) Act, 2022 (*the “Act of 2022”*). His earlier application for the same relief bearing No. 1327 of 2023 was heard and dismissed by the learned Addl. Sessions Judge,-IV, Malir, Karachi vide order dated 10.04.2023.

2. As per F.I.R., on 01.04.2023 at 11:00 p.m., the applicant was arrested by A.S.I. Muhammad Naeem Jamali of P.S. Sohrab Goth near Lassi Goth Graveyard, Sohrab Goth, Karachi on being found in possession of 550 grams of charas, for which he was booked in the aforesaid F.I.R.

3. Learned counsel for the applicant contends that the applicant is innocent and he has falsely been implicated in this case; that nothing was recovered from the possession of the applicant and the alleged charas was foisted upon him by the police due to non-payment of illegal gratification; that the alleged offence is punishable in maximum for seven years and not less than three years; as such, the same does not fall within the prohibitory clause of section 497, Cr.P.C.; hence, the applicant is entitled to the concession of bail.

4. On the other hand, learned Addl. P.G. opposes the grant of bail to applicant on the ground that the applicant is involved in an offence, which is ruining the society and as per C.R.O. he has previously involved in Crime No. 826/2022, registered at P.S. Sohrab Goth under Articles 3/4 of the Prohibition (Enforcement of Hadd) Order, 1979.

5. Heard, record perused.
6. Under Section 2, clause (s) of the Control of Narcotic Substances (Sindh Amendment) Act, 2021 (*the “Act of 2021”*) “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; leaf, cannabis and poppy straw;

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)

7. Section 9 (1) of the Act of 2022 provides punishments with imprisonment up to nine years not less than five years for possessing, importing or exporting and trafficking any 'charas' in contravention of sections 6, 7 and 8 of the Act for more than 500 grams and up to 999 grams in quantity.

8. In the instant case, it is yet to be determined by the trial Court as to under which provision of two enactments i.e. Act of 2022 or Act of 2021, the charge is to be framed against the applicant. So far the quantum of punishment is concerned for the adjudication of the instant bail, it is an admitted position that under the Act of 2021 the alleged offence of possessing 550 grams of charas falls under section 9 (b), which provides punishment with imprisonment which may extend to seven years but shall not be less than three years, while under the Act of 2022, the prescribed punishments with imprisonment is up to nine years and not less than five years.

9. The law is very liberal especially when it is salutary principle of law that in the offences which carry lesser punishment and the maximum punishment does not fall within the prohibitory clause of section 497, Cr.P.C. the grant of bail is a rule while its refusal is merely an exception. Police has submitted the challan against the applicant; hence, he is no more required for further investigation. The applicant is not a previously convicted of any offence. Accordingly, the instant application is allowed and in result thereof the applicant is admitted to post-arrest bail in aforesaid crime/offence subject to furnishing by him solvent surety in the sum of Rs. 50,000/- (*Rupees Fifty Thousand only*) and P.R. Bond in the like amount to the satisfaction of the trial Court.

JUDGE

Athar Zai