

IN THE HIGH COURT OF SINDH, AT KARACHI
Cr. Bail Application No. 791 of 2023

Applicant : Muhammad Jamsheed s/o Akbar Khan, through
Mr. Salah ud Din Khan Gandapur, Advocate.

Respondent : The State, through Ms. Abida Parveen Channar,
Special Prosecutor A.N.F.

Date of hearing : 14.06.2023
Date of order : 14.06.2023

ORDER

ZAFAR AHMED RAJPUT, J:- Through instant Criminal Bail Application, applicant/accused Muhammad Jamsheed s/o Akbar Khan, seeks post-arrest bail in Crime No. 06 of 2023 registered at P.S. A.N.F., Clifton, Karachi under section 9(1) 3 (C) of the Control of Narcotic Substances (Amendment) Act, 2022 (*the "Act"*). His earlier application for the same relief bearing No. 32 of 2023 was heard and dismissed by the learned Special Court-II (C.N.S.) Karachi vide order dated 11.03.2023.

2. As per F.I.R., on 03.02.2023 at 1900 hours, the applicant was arrested by Inspector Anjum Shakeel of A.N.F., Clifton, Karachi at Water Filtration Plant, near Old Sea View Apartments, Clifton, Karachi on being found in possession of 2 kg of charas, for which he was booked in the aforesaid F.I.R.

3. Heard, record perused.

4. Section 9 (1) of the Act provides punishments with imprisonment up to fourteen years and not less than nine years for possessing, importing or exporting and trafficking *charas* in contravention of sections 6, 7 and 8 of the Act for more than 1000 grams and up to 4999 grams in quantity. At the stage of bail, the lesser of two punishments is to be taken into consideration, as the quantum of punishment could only be decided by the trial Court after recording of evidence. Reference in this regard is made to the case of *Shahzore v. The state* (2006 YLR 3167).

5. So far case of the applicant is concerned, it has been pleaded that he was arrested by the rangers from his house and he was subjected to torture. It is an admitted position that after arrest on 03.02.2023, complainant Inspector Anjum Shakeel produced the applicant before II-Judicial Magistrate, Karachi-South for remand and the applicant made a complaint of maltreatment, he was referred to hospital for treatment and report; after receiving such positive medical report that the applicant was subjected to torture during police custody, the Judicial Magistrate issued a show-cause notice to the I.O. of the case under section 29 of Police Act r/w section 337-A(1), P.P.C. There is no previous record of the applicant of involving in any crime. He is confined in judicial custody since day of his arrest. The law is very liberal especially when it is salutary principle of law that in the cases where the offences carrying lesser punishment which 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.

6. Under the circumstances, the case of the applicant falls within the scope of bail as contemplated by Section 51 (2) of the Act. 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. 100,000/- (*Rupees One Lac only*) and P.R. Bond in the like amount to the satisfaction of the trial Court.

7. Above are the reasons of my short order dated 14.06.2023

JUDGE

Athar Zai