

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Bail Application No. 268 of 2023

DATE

ORDER WITH SIGNATURE OF JUDGES

For hearing of bail application.

05-05-2023

Mr. Shah Imroze Khan, Advocate for applicant.
Ms. Abida Parveen Channer, Special Prosecutor, ANF.

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Omar Sial, J: Suleman has sought post arrest bail in crime number 62 of 2022 registered under sections 6 and 9(c) of the CNS Act, 1997. Earlier, his application seeking bail was dismissed on 23.01.2023 by the learned Special Court-1 (CNS) Karachi.

2. An ANF police party received information about the presence of the applicant at a specified place as he was alleged to be a well-known drug peddler. The applicant was apprehended and 736 grams of methamphetamine recovered from his possession.

3. Learned counsel has stressed on the fact that the quantity of the narcotics is such that its possession potentially leads to a 16 month imprisonment and thus falls within the non-prohibitory clause of section 497 Cr.P.C. This, in addition to the fact that the samples were sent to the chemical analyst after 5 days, were, the 2 grounds the learned counsel has argued.

4. I have heard the learned counsel for the applicant and the learned Special Prosecutor, ANF.

5. With much respect, I do not agree with the learned counsel that the punishment prescribed for possessing 736 grams of methamphetamine is 16 months. After the amendment to the CNS Act, 1997 made in 2021, the possession of such a quantity will attract 7 years imprisonment. This too would fall within the non-prohibitory clause of section 497 Cr.P.C.

Methamphetamine is an extremely potent substance and small quantities of it can lead to the death of a person. In the recent years, methamphetamine has spread like wild fire in the city and it is the lower strata of society which has been most impacted by it. Perhaps the legislature should have assigned punishment in accordance with the potency of a narcotic rather than its weight. That however is for the Parliament to consider. As far as this Court is concerned, I have the principles enunciated in the Tariq Bashir and 5 others vs The State in mind and am inclined to treat 736 grams of methamphetamine possession as an exceptional ground to decline the applicant bail in a case, the punishment for which falls within the non-prohibitory clause of section 497 Cr.P.C.

6. No malafide exists for ANF to falsely implicate the applicant, in fact none has been argued. The delay in sending the samples for chemical analysis, if any, and its impact on the prosecution case will be determined at trial. I am not inclined to give any concession to the applicant on this ground at this preliminary stage. Prima facie the applicant was arrested with a sizeable quantity of a lethal substance, the possession of which is prohibited by the CNS Act, 1997. The chemical laboratory has opined that the seized substance was methamphetamine.

7. Above are the reasons for the short order dated 03.05.2023.

JUDGE