

**ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD**

Criminal Bail Application No.S-689 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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For orders on office objections.
For hearing of main case.

27.07.2023

Mr. Muhammad Sachal A. Awan, Advocate for the applicants.
Mr. Imran Abbassi A.P.G. Sindh.

MOHAMMAD ABDUR RAHMAN, J. This is an application under section 497 of the Code of Criminal Procedure 1898, that has been maintained by the Applicants in crime No.03 of 2023 under Section 9-1(3)(c) of the Narcotics Substances Act 1997.

2. The facts as narrated in the FIR are that on 15 May 2023, at about 1725 hours the police were patrolling Indus Highway near Aamri City and at about 1600 hours saw a white Toyota Corolla bearing Registration No. BTN-577 and which they stopped and within which was discovered two pieces of 'Charas' having a net weight of 1900 grams. On a further search of the motor vehicle 5 white colored "Kattas" were found on the back seat of the motor vehicle and 55 "Kattas" were found in the trunk (Dickey) of the motor vehicle. When examined they were found to contain a substance known as "Z-21" out of which 02 "Kattas" and 08 "Kattas" were found in sealed condition while 50 packets each "Kattas" out of 40-40 packets from the 02 "Kattas" were opened. The police proceeded to register the FIR at 1920 hours i.e. within about one hour of the recovery and the chemical examination of the substances was sent on 16 May 2023, to Karachi and which was received in Karachi on 17 May 2023 and which report has come out as correct.

3. Mr. Muhammad Sachal R. Awan Advocate for the applicant has contended that there was an inordinate delay in registering the FIR

inasmuch as the recovery was made at a distance of 3 Kilometers from the Police Station and keeping in the mind the distance involved the time of 1 hour to register the FIR was inordinate. He further stressed that in Crime No.04 of 2023, which was filed under section 8 of Prohibition of Preparation, Manufacturing, Storage Sale and Use of Gutka and Manpuri Act, 2020, bail has been granted to the accused and concluded by stating that as 1900 grams of charas been recovered from the motor vehicle, it cannot be stated that 1900 grams should be attributed to any of the co-accused. He relied upon two decisions of this Court reported as **Asghar Ali vs. The State**¹ in which where no one was found around the accused to corroborate the fact that a sale of “Charas” was being made and as no eye-witness to the recovery had been produced to confirm such an incident against a recovery of 1500 grams of “Charas” being made from the accused, bail was granted. He also relied on the decision of this Court reported as **Nasir Mahmood vs. The State**² 2021 P.Cr.L.J. 443 in which against a recovery of 2040 grams of “Charas” from the accused bail was granted on the ground that there was no private witness to corroborate the FIR and there had been a delay in obtaining the chemical report of the substances recovered.

4. The learned A.P.G. responding to the arguments of Mr. Muhammad Sachal Awan stated that the incident occurred on 15 May 2023 at 1800 hours and the FIR was lodged within about one hour of the incident at 1920 hours which was not an inordinate delay keeping in mind the distance between the incident and the Police Station as well as the time that it would have taken to conduct the search and secure the recovery. He further clarified that 03 previous FIRs have been registered against the Applicant No. 2 under the Prohibition of Preparation, Manufacturing, Storage Sale and Use of Gutka and Manpuri Act, 2020 but this is the first recovery of Charas that is being made from either of the Applicants. He

¹ 2022 P.Cr.L.J. Note 86

² 2021 P.Cr.L.J. 443

states that the chemical report was sent on the morning of 16 May 2023 to Karachi and was received by at Karachi on 17 May 2023 i.e. within 48 hours and which keeping in mind the distance as between the Police Station and the Laboratory at Karachi this could not be considered as an inordinate delay. He finally concluded by stating that the offence is a large amount and fell within the prohibitory clause of Section 497 of the Code of Criminal Procedure 1898 and keeping in mind the size of the recovery, bail should be refused.

5. I have heard both the counsel for the Applicants and the learned A.P.G. and have perused the record. It is apparent that there is no inordinate delay in the registration of the FIR which was registered within one hour of the recovery having been made from the car in which the accused were driving. The chemical analysis of the narcotics that were seized were sent for chemical analysis within a period of 72 hours as mandated in Sub-Rule (2) of Rule 4 of the Control of Narcotic Substances (Government Analysts) Rules 2001 and which have yielded a positive result. The recovery that has been made of 1900 grams is also a very large amount and which comes within the prohibitory clause of Section 497 of the Code of Criminal Procedure, 1898. There is enough evidence available to connect the Applicants and no ill will or mala fide has been demonstrated by the Applicant on the part of the police to lead me to believe that they Applicants have been falsely implicated. There being sufficient incriminating material available on the record to prima facie connect with the Applicant with the commission of the alleged offence for me to conclude that this not a case of further inquiry to allow the Applicants the concession of bail.

6. For the foregoing reasons, I am of the opinion that the offence coming within the prohibitory clause and there being no ground to show that there is any basis for a case of further inquiry this bail application

must be dismissed and for which reasons I had passed an order on 27 July 2023 and these are the reasons for that order.

JUDGE

Hyderabad Dated 4 August 2023