

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

Cr. Bail Application No.S-464 of 2023

Applicants: Muhammad Saleem S/o Dhani Bux,
Through Mr. Aslam Baig Laghari,
Advocate.

The State: Through Mr. Shawak Rathore,
Deputy Prosecutor General.

Date of Hearing: 10.07.2023

Date of Order: 10.07.2023

ORDER

ARBAB ALI HAKRO, J.- Through this bail application under Section 497 Cr.P.C., the applicant/accused Muhammad Saleem, son of Dhani Bux, seeks admission to post-arrest bail in Crime No.109 registered against him on 10.03.2023 at Police Station Shahdadpur District Sanghar, under Sections 9(1)(3) of Control of Narcotics Substances, Act 1997 (Amendment Act, 2022). The applicant had previously applied for post-arrest bail in Special Case No.57 of 2023, and the same was dismissed by the Additional Sessions Judge-I / Special Judge for CNS(MCTC) Tando Adam vide order dated 20.4.2023. After that, the applicant approached this Court.

2. The case of the prosecution, as set up in the subject FIR, is that on 10.3.2023 at 2020 hours, a Police party of Police Station Shahdadpur headed by SIP Barkat Ali Laghari while patrolling arrested applicant Muhammad Saleem from WAPDA road near Singhar Shakh Mori Shahdadpur, and recovered one plastic shopper containing charas weighing 2100 (two thousand one hundred) grams in the shape of

06(six) small and big pieces, out of it 100 grams were separated and sealed as a sample from each piece for chemical examination, while remaining charas was sealed separately. Such a memo was prepared, which was attested by Police Constables. Accordingly, complainant lodged this FIR.

3. At the very outset, it has been contended by the learned counsel for the applicant that the applicant has been falsely roped in this case against the facts and circumstances. He argued that only 100 grams out of 2100 grams of charas were separated and sent for chemical analysis. It contends that nobody from the public was taken as mashir and that there was a delay of 04(four) days in sending the charas to the chemical laboratory through Rule 4(2) of the Control of Narcotic Substances (Government Analysts) Rules, 2001, provides that the seized narcotics be dispatched for analysis not later than seventy-two hours of the seizure. Lastly, he concluded that the case having been challaned, the applicant was no longer required for investigation, who may thus be enlarged on bail. In support, he relied upon the case law reported in **PLD 2023 (AJK) 11, 2019 P Cr. L.J. Note 134 and 2022 P Cr. L.J 690.**

4. On the other hand, learned Deputy Prosecutor General opposed the bail application and contended that at the time of arrest, a vast quantity of charas, viz. 2100 grams was recovered from the applicant's possession, and the Police had no reason to foist it upon him. He pointed out that the applicant is also involved in other criminal cases, which shows that he is a habitual offender. As to the non-association of witnesses/mashirs from the public, he contended that Section 103 Cr. P.C. provisions were not strictly applicable in narcotics

cases. Concerning the delay in sending the sample to the Chemical Laboratory, he argued that there is only a day delay. However, the rules to that effect were directory and not mandatory. In support of his contentions, he referred to the cases reported in **2016 SCMR 1447 and 2017 SCMR 1874**.

5. I have heard learned counsel for the applicant and learned D.P.G, so also carefully examined the material available on record. The offence alleged against the applicant is punishable by imprisonment for fourteen years and thus falls within the prohibitory clause of Section 497(1) Cr.P.C. So far, the contention of learned counsel for the applicant that there is delay of four days in sending the samples to the Chemical Laboratory, though Rule 4(2) of the Control of Narcotic Substances (Government Analysts) Rules, 2001, provides that the seized narcotics be dispatched for analysis not later than 72 hours of the seizure. The above Rules are directory and not mandatory; their compliance would not frustrate the purpose of the Act. In this context, I relied upon the case of **Gull Din v. The State through P.G. Punjab and another (2023 SCMR 306)**, wherein the Apex Court has held as under: -

"This Court in a number of judgments has held that the said rule is directory, including in the cases of Tariq Mehmood v. State (PLD 2009 Supreme Court 39), Gul Alam v. State (2011 SCMR 624) and Muhammad Sarfraz v. State (2017 SCMR 1874). And, a five-member Bench of this Court, in the case of Tallat Ishaq v. National Accountability Bureau (PLD 2019 Supreme Court 112) held that the non-compliance of a directory rule would not entitle the petitioner to bail. Though the Tallat Ishaq was a case under the National Accountability Bureau Ordinance, 1999, in our opinion, the stated principle enunciated therein would be equally applicable to cases under the narcotic laws when directory provisions are not complied with. Accordingly, the ground of non-compliance with rule 4(2) of the Rules will not on its own be a sufficient ground to entitle the petitioner to the concession of bail."

6. With regard to the non-association of private persons, the application of section 103 Cr.P.C. is excluded explicitly in narcotics cases as provided in Section 25 of the CNSA; even otherwise, according to the pronouncements of the Apex Court, Police officials are as good a witness as any other person.

7. Now, turning to the merits of the case. Upon examination of the documentation, it becomes evident that the applicant was apprehended immediately. Subsequently, a substantial quantity of 2100 grams of charas, a narcotic substance, was discovered within his belonging. This quantity undoubtedly qualifies as considerable. A copy of the relevant page of Register No.19 is on record verifying the safe custody of the case property/samples. To confirm the nature/type of recovered substance, samples were separated from all the pieces and sent to the FSL for chemical analysis. The FSL has furnished its' positive report confirming the samples to be "**charas**". No malafide, ill will or grudge has been shown against the Police for falsely involving the applicant in the instant case, nor is it possible for the Police to plant such a huge quantity of charas which is, by far, the most expensive drug. On the tentative assessment of the material on record, the applicant is prima facie connected with the commission of an offence which is not only against the State but also against the society at large.

8. In view of the above, I consider that the applicant has failed to make out a prima facie case for a grant of post-arrest bail on merits. Accordingly, the bail application is dismissed.

9. Needless to add, the observations made hereinabove are tentative in nature only to decide this bail application, which shall not in any manner influence the trial court at the time of final decision of the subject case. However, the learned trial court is directed to proceed with and conclude the trial expeditiously.

JUDGE

Shahid