

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

CrI. Bail Appln. No. S – 368 of 2023

(Gul Muhammad Phulpoto v. The State)

Date	Order with signature of Judge
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For orders on office objections
For Hearing of Bail Application.

Mr. Ghulam Mujtaba Jakhar, Advocate for applicant.
Mr. Aftab Ahmed Shar, Additional P.G for the State.

Date of Hearing: **17.07.2023**
Date of order: **17.07.2023**

ORDER.

AMJAD ALI BOHIO, J:- The applicant filed the above bail application after the dismissal of Cr. Bail Application No. 1366 of 2023, as per the order dated 17.05.2023, passed by the Court of Additional Sessions Judge-I (MCTC), Special Judge for CNS, Khairpur. The applicant's original application was related to Crime No. 158 of 2023 of P.S. B-Section Khairpur, involving the offense under Section 9-C of the CNS Act, 1997.

2. According to the prosecution's account, Gul Muhammad Phulpoto, the applicant, was found in possession of 1400 grams of charas on 06.05.2023 at 1600 hours. The police party led by ASI Bux Ali Shahani made the discovery on the link road from Janwari village to Gajjo Mor. Subsequently, an FIR was registered on the same day at 1730 hours. The investigation officer recorded statements from prosecution witnesses who were present during the seizure, and their statements supported the authenticity of the recovery. Additionally, the chemical report confirmed the presence of charas in the confiscated contraband material.

3. In the present case, both the counsel for the applicant and the learned District Public Prosecutor (DPG) for the State were given an opportunity to present their arguments.

4. The applicant's counsel primarily argued that the weight of the recovered charas, which amounts to 1400 grams, is relatively small. He contended that ASI Abdul Ghaffar Phulpoto, in collaboration with officials from the Anti-Encroachment Department, conspired to falsely implicate the applicant's party. This ongoing dispute has resulted in multiple false FIRs being registered against the applicant. Notably, FIRs in Crime No. 294, 296, 288, 285 of 2022, and 105 of 2023 have been filed at P.S. B-Section, Khairpur. The applicant's alleged involvement in Crime No. 105 of 2023 indicates the malicious intent of ASI Abdul Ghaffar. Finally, the counsel asserts that the applicant is entitled to the concession of bail. To support this contention, the counsel relied upon various cases, including Amir Muhammad Siddiq and another vs. The State (2023 P Cr. L J Note 10), Mirajuddin vs. The State (2023 P Cr. L J 282), Javed Khan vs. The State (2022 YLR 1655), Muhammad Waseem Mughul vs. The State through Advocate-General of Azad Jammu and Kashmir, Muzaffarabad (PLD 2023 High Court (AJK) 11), Ismail vs. The State (2023 MLD 942), Ali Raza vs. The State and another (2022 P Cr. L J 1466), and the order dated 16.01.2023 passed by this Court in Criminal Bail Application No. S-485 of 2022.

5. The learned Additional Public Prosecutor (PG) has argued that the case laws cited by the learned Counsel for the Applicant/accused are not relevant as they pertain to the period prior to the recent amendment under the CNS Act. The offense in question, involving the recovery of 1400 grams of charas, is now punishable for up to 14 years, with a minimum sentence of 9 years. The copies of FIRs submitted with the bail application were filed by ASI Abdul Ghaffar Phulpoto, who is not the complainant in the specific case where 1400 grams of charas were allegedly seized from the applicant/accused. Moreover, no evidence has been presented to indicate that the other cases in which FIRs were registered have been proven to be false. Given the gravity of the applicant/accused's involvement in a serious narcotics offense, the trial court appropriately rejected the bail application.

6. Based on the prosecution's account, it is noted that the accused was found in possession of seven pieces of charas weighing 1400 grams. The mere registration of cases against the applicant or their relatives does not justify the granting of bail. The entire contraband material was sealed

on the spot and sent to the Chemical Examiner for analysis. In contrast to the facts presented in Criminal Bail Application No. S-485 of 2022, where only 200 grams of charas were examined, in the present case, the entire 1400 grams of charas were sent to the Chemical Examiner in a duly sealed parcel. Therefore, the facts of the aforementioned case are not relevant to the present case, especially considering the complete dispatch of the seized charas for examination. The facts of the mentioned authorities can be distinguished from the facts of the present case, particularly as the contraband was recovered from the accused's personal search and there has been no trial delay in the present case.

7. It is further observed that the recovery memo indicated the presence of a sealed parcel, and the police had no prior information regarding the specific case. Consequently, the provision of Section 103 Cr.P.C. is not applicable in the present case. There is no material available on record to suggest any malicious intent on the part of the complainant and witnesses in falsely implicating the applicant/accused.

8. According to the Control of Narcotics Substance (Amendment) Act, 2022, the offense of possessing charas ranging from 1000 grams to 4999 grams carries a punishment of up to fourteen years, with a minimum sentence of nine years and a fine ranging from Four Hundred Thousand Rupees to Eighty Thousand Rupees. The specific punishment for the recovery of 1400 grams of charas is provided under column No. 3, table under Section 9(1) of the Control of Narcotics Substance (Amendment Act), 2022. Due to the enhancement of punishment in cases involving the recovery of 1400 grams, which is considered a borderline case, the concession of bail is no longer available unless the applicant can establish a case for further inquiry, which they have failed to do.

9. Therefore, due to the lack of merit in the bail application, it is dismissed. It is important to emphasize that any observations made in this order are provisional and will not affect the merits of the case.

JUDGE