

IN THE HIGH COURT OF SINDH, SUKKUR BENCH AT SUKKUR

Cr. Bail Application No.S-505 of 2023

Applicant: Sudheer Ahmed S/o Muhammad Budhal,
Through Mr. Gulshan Ghumro, Advocate.

The State: Through Mr. Khalil Ahmed Maitlo, D.P.G.

Date of Hearing: 21.08.2023

Date of Order: 21.08.2023

ORDER

ARBAB ALI HAKRO, J.- Through this bail application under Section 497 Cr.P.C., the applicant/accused Sudheer Ahmed, son of Muhammad Budhal Narejo, seeks admission to post-arrest bail in Crime No.14/2023, registered against him on 07.07.2023 at Police Station F.M Narejo District Khairpur, under Sections 9-C of Control of Narcotics Substances, Act 1997 (Amendment Act, 2022). The applicant had previously applied for post-arrest bail by filing Cr. Bail Application No.2006 of 2023, before learned Additional Sessions Judge-I/ (MCTC), Special Judge for C.N.S., Khairpur, but the same was dismissed vide order dated 22.07.2023; hence applicant approached this Court.

2. The case of the prosecution, as set up in the subject F.I.R., is that on 07.07.2023 at 1300 hours, a Police party of Police Station F.M Narejo headed by A.S.I. Ghulam Abbas Bugti, while patrolling, apprehended applicant Sudheer Ahmed from link road, near Dang Masjid, Taluka Kingri, District Khaipur, who was coming from Kot Pull on 125 motorcycle, and recovered one patti of charas from his front fold of Shalwar; besides cash amount of Rs.500/- in the shape of one denomination note of Rs.500 was secured. The alleged charas, cash amount and motorcycle were seized at a spot under a memo prepared in the presence of police mashirs. Accordingly, the complainant lodged this F.I.R.

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. It is argued that from the quantity of charas allegedly recovered from the

applicant/accused; it appears that a false case/story has been managed; besides, there is no independent witness to be shown as mashir of arrest and recovery, which is violative of Section 103 Cr.P.C. It is further argued that the applicant is neither dangerous nor desperate or hardened criminal; however, he has been involved by the Police only to show their efficiency to impress their superiors. Learned Counsel argued that only 30 grams out of 1500 grams of charas were separated and sent for chemical analysis. Learned Counsel contended that admission of guilt before the Police has no admissibility in evidence under Articles 38 & 39 of Qanoon-e-Shahdat Order, 1984. 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 **2011 MLD 365 & 2011 P Cr. L J 177**.

4. On the other hand, the learned Deputy Prosecutor General opposed the bail application and contended that at the time of arrest, a vast quantity of charas, viz. 1500 grams was recovered from the applicant's possession, and the Police had no reason to foist it upon him. 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. Learned Addl. P.G. contended that the forensic report was also met positively, hence applicant is not entitled for bail. In support of his contentions, he referred to the cases reported in **2012 SCMR 1212**.

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, which may extend to fourteen years but shall not be less than nine years and thus falls within the prohibitory clause of Section 497(1) Cr.P.C. Since there is no delay in sending the samples to the Chemical Laboratory as the same has been sent for chemical examination within prescribed time as provided under Rule 4(2) of the Control of Narcotic Substances (Government Analysts) Rules, 2001, which provides that the seized narcotics be dispatched for analysis not later than 72 hours of the seizure. The above Rule is directory and not mandatory; compliance with the same 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 noncompliance 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 noncompliance 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 1500 grams of charas, a narcotic substance, was discovered within his belonging. This quantity undoubtedly qualifies as considerable. A copy of the relevant page of Diary No.04 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 F.S.L. for chemical analysis. The F.S.L. 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 the final decision of the subject case. However, the learned trial court is directed to proceed with and conclude the trial expeditiously.

JUDGE