

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No. 1953 of 2023

Date

Order with signature of Judge

For hearing of bail application

19.9.2023

Mr. Anwer Zaib Khan advocate for the applicant
Syed Meeral Shah Bukhari Addl. P.G

Through this bail application under Section 497/498 Cr.P.C., the applicant Ismail has sought admission to post-arrest bail in F.I.R No. 282/2023, registered under Section 9(1) 3(C) CNS Act at P.S Clifton Karachi.

2. The charge against the applicant is that on 17.07.2023 Complainant Inspector Fazal-ur-Rehman of PS Clifton, Karachi arrested the applicant and recovered Charas weighing 2015 grams, from his possession. After observing the required formalities at the spot the recovered narcotics and the applicant were brought to P.S Clifton Karachi where the subject FIR was lodged under Section 9(1) 3(C) CNS Act 1997 on the same day. The prosecution obtained the chemical report of the alleged recovered Narcotics with a positive result. The earlier bail plea of the applicant has been declined by the Special Court-II CNS vide order dated 03.08.2023 in Bail Application No. 2644/2023.

3. Learned counsel for the applicant/accused argued that the applicant/accused is innocent and has falsely been implicated in this case. Learned counsel emphasized that according to the prosecution story, no independent witness has been cited by the complainant though he received spy information. Per learned counsel, the prosecution miserably failed to provide any private witness for the search and recovery of alleged charas as the area is very thickly populated which is a clear violation of Section 103 Cr. P.C, therefore it creates serious doubts, hence the case needs further inquiry. He argued that both the mashirs are subordinate to the complainant, however, the prosecution succeeded in obtaining a positive Chemical Examiner report, which creates doubt in the prosecution story, however, the applicant cannot be saddled with the charas allegedly recovered from the applicant. He next argued that one day before the alleged recovery the relative of the applicant moved an application to the competent authority about the arrest of the applicant by Pak Rangers, therefore, the false implication of the applicant/accused cannot be ruled out at this stage. He lastly prayed for allowing the bail application.

4. On the other hand learned APG argued that the applicant/accused was arrested on the spot and from his possession charas weighing 2015 grams was recovered; He added that the embargo contained in Section 51 of the Control of Narcotics 'Substance Act 1997 does apply to the case of the present applicant, which is not in derogation of Section 103 Cr. P.C. The learned Special Prosecutor has submitted that the Chemical Examiner report is positive and supports the case of prosecution. He further argued that the complainant has rightly taken out the sample from the entire charas and sent it for chemical examination as such there is no illegality in conducting the said proceedings as such the applicant cannot take this defense at the bail stage to create doubt in the prosecution story. He further submitted that as per the recent amendment in the law, through Act No.XX of 2022 in the Control of Narcotics Substance Act 1997, a punishment of 14 years is mentioned, which falls within the prohibitory clause of Section 497 Cr. PC. The learned APG pointed out that there is a criminal record of the applicant available in the police file; and, the recovery of a huge quantity of charas cannot be foisted upon the applicant Hence, the applicant/accused is not entitled to a grant of bail.

5. Considering the submissions of learned counsel for parties, going through the recovery memo, alleged statement/interrogation report of the applicant, and the report of the chemical examiner, prima facie, suggest that the contraband was recovered from the possession of the applicant.

6. The charas (cannabis) allegedly recovered from the applicant falls within category (i) specified in clause (s) of Section 2 of the Act of 1997 substituted through The Control of Narcotics Substance (Sindh Amendment) Act, 2021, and the net weight thereof is more than double the maximum limit of one kilogram (1,000 grams) prescribed in clause (b) of Section 9 *ibid*. Therefore, this is not a borderline case between the said clauses (b) and (c). Prima facie, there appears to be no delay in sending the entire charas for chemical examination, which result is positive. The punishment for the offense falling under clause (c) is death or imprisonment for life or imprisonment for a term that may extend to fourteen years. Thus, the prohibition contained in Section 51 of the Act of 1997 shall apply to this case, and it also falls within the prohibitory clause of Section 497 Cr.P.C. Therefore, the applicant is not entitled to the concession of bail and there appears to be no exception to this rule in the facts and circumstances of the instant case.

7. The above view is fortified by Muhammad Noman Munir V/S The State and another, 2020 SCMR 1257, and Bilal Khan V/S The State, 2021 SCMR 460. In the former case, 1,380 grams of cannabis and 07 grams of heroin were recovered from the accused, and in the latter case, the quantity of the recovered ice was 1,200 grams. In both the said authorities, the concession of bail was declined by the Supreme Court by holding that the prohibition embodied in Section 51 of the Act of 1997 was applicable thereto. It was also held in Muhammad Noman Munir (supra) that the non-association of a witness from the public and his non-cooperation was a usual conduct symptomatic of social apathy towards civic responsibility; and, even otherwise the members of the contingent being functionaries of the State are second to none in their status, and their acts statutorily presumed, prima facie, were intra vires.

8. The guilt or innocence of the applicant is yet to be established as it would depend on the strength and quality of the evidence produced / to be produced by the prosecution and the defense before the trial Court.

9. In view of the above, the instant bail application is dismissed with direction to the learned trial Court to conclude the trial of the subject case within two (02) months strictly under the law. It is clarified that the observations made herein are tentative and shall not prejudice the case of either party or shall influence the learned trial Court in any manner in deciding the case strictly on merits under the law.

JUDGE