ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Application No. 357 of 2024

Date	*Order with signature of Judge*

Applicant	:	Muhammad Bilal Jalal, through Mr. Muhammad Hanif Noonari, Advocate.
Respondent	:	State through Ms. Rahat Ahsan, Additional Prosecutor General, Sindh.
Date of hearing	:	*27th May, 2024*
Date of judgment	:	*27th May, 2024*

O R D E R

Muhammad Saleem Jessar, J:- Through this bail application, Applicant Muhammad Bilal Jalal son of Muhammad Jalal seeks his release on post arrest bail in Crime No.102/2024 of P.S Malir City, Karachi, under Section 6/9(1)-3 (c) of CNS Act. Earlier the applicant preferred his bail plea before the first forum, which was turned down by means of order dated 02.02.2024; hence, he has approached to this Court through instant Application.

2. The facts of the case are already mentioned in the FIR which is annexed with Court file, therefore, there is no need to reproduce the same.

3. Learned counsel for the applicant while reiterating the grounds mentioned in the memo of bail application submitted that the applicant is innocent and has been falsely implicated in this case due to malafide intention and ulterior motives. He further submitted that nothing was recovered from his possession; however the recovered contraband as shown has been foisted upon him. He further submitted that incident took place in thickly populated area and the police had prior information about alleged presence of applicant but Inspite of that not a single person from the locality has been associated as witness therefore, there is clear violation of section 103 Cr.P.C. To support his contentions learned counsel for the applicant placed reliance upon the cases of Zahid Sarfaraz Gill V/S The Sate (PLJ 2024 SC (Cr.C.) 8) and Asghar Ali V/S The State (2022 P.Cr.L.J. Note 86).

4. Learned Additional Prosecutor General, Sindh appearing for the State opposes the bail application on the ground that 1090 grams charas is huge

quantity. She further adds; entire quantity of charas was sent to laboratory for chemical analysis and same has returned in positive. She, therefore, submits that applicant has got no good case for his release on bail. She; however, admits that per quantity, the punishment provided by law is in two folds viz. not less than nine years and not more than fourteen years. To support her contentions, she has placed reliance upon the case reported as Mst. Fursan v. The State (2022 SCMR 1950) and Surraya Bibi v. The State (2008 SCMR 825).

5. Heard arguments, record perused.

6. The applicant was apprehended by the police and allegedly 1090 grams Charas was recovered from his possession which marginally exceeded upper limit of section 9(b) of CNS Act and it is case of border line between clauses (b) and (c) of section 9 of Control of Narcotic Substances Act 1997. In this regard, I am fortified by the case law reported as, *Sheeren Muhammad v. The State (2006 P.Cr.L.J 726), Mehboob Ali v. the State (2007 YLR 2968), and Ayaz Ali v. The State (2011 P.Cr.LJ 177).* No doubt, by virtue of Section 34 of the Act, application of Section 103 has been ousted; however, when police officer went upon to apprehend a person particularly when he had advanced information then it was incumbent upon police officer to associate some independent person(s) to believe that accused was captured by them from the scene of offence as claimed by the prosecution in its FIR.

7. Since the punishment provided by law for the offences as per quantity so recovered, is not less than nine years and not more than fourteen years. Hence, when statute provides two punishments then lesser quantum of sentence should be considered particularly at bail stage. The lesser quantum of sentence is nine years which does not exceed the limit of prohibitory clause of section 497(i) Cr.P.C. Reliance can be placed upon the cases of JAMAL-UD-DIN alias ZUBAIR KHAN Versus THE STATE vide 2012 SCMR 573 and case of ZAHID SARFARAZ GILL Versus THE STATE vide PLJ 2024 SC (Cr.C) 8. In view of above legal position, the offences with which the accused has been charged do not fall within the ambit of prohibitory of clause of section 497 Cr.P.C.

8. The case has been challaned and the applicant is no more required by the police for purpose of investigation or interrogation. It is settled principle of law that every accused would be presumed to be blue eyed boy of the law until and unless he may be found guilty of alleged charge; and law cannot be stretched upon in favour of the prosecution particularly at bail stage. Mere

heinousness of crime will not disentitle to an accused from concession of bail when ultimate conviction, if any, can repair wrong caused by the mistaken relief granted to him; however, if after lengthy trial, he/she is found innocent then golden days of his/her life spent under incarceration cannot be repaired with.

9. The upshot of above discussion is that the case against applicant requires further inquiry within meaning of subsection 2 to Section 497 Cr.P.C. Consequently, instant bail application is hereby allowed; applicant, shall be released on bail subject to furnishing his solvent surety in the sum of Rs.100,000/- (Rupees One Lac Only) and PR Bond in the like amount to the satisfaction of learned trial Court.

10. It needs not to iterate that the observation(s) made hereinabove is/are tentative in nature and shall not prejudice the case of either party during trial. However, learned trial Court would be competent to proceed against the Applicant as well as his surety in terms of Section 514 Cr.P.C, if he will be found misusing concession of the bail.

11. This Criminal Bail Application is disposed of in the terms indicated above.

Zulfiqar/P.A

J U D G E