

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

CrI. Bail Application No.S – 369 of 2024

Applicant : Azam Ali Shaikh, through
Mr. Sohail Ahmed Khoso, Advocate.

Respondent : The State, through
Mr. Muhammad Farooq Ali Jatoi,
Special Prosecutor ANF along with
Sub-Inspector Abdul Rauf, ANF Sukkur.

Date of Hearing : 22-07-2024
Date of Decision : 22-07-2024

ORDER

Amjad Ali BohioJ: This bail application under Section 497, Cr.P.C is filed by applicant/accused Azam Ali son of Ali Hassan Shaikh, praying for post arrest bail in FIR No.01 of 2024 registered on 23.02.2024 at 2100 hours under section 6,9(1), 5(A), 9(2),14 and 15 CNS (Amendment 2022)Act, 1997(**the Act**) at P.S Anti-Narcotic Force, Sukkur.

2. The allegations against the applicant are that on 23.02.2024, at 18:30 hours, Sub Inspector Abdul Rauf of the Anti-Narcotics Force (ANF) arrested him along with co-accused/driver Gul Hassan son of Bukhsial Khan Chandio. They were intercepted while traveling in a Suzuki Mehran car near HD Restaurant on Shikarpur Road. During the interception, co-accused Gul Hassan was found in possession of one packet of opium weighing 952 grams and one packet of “Methamphetamine (ICE)” weighing 640 grams. The applicant was also found in possession of one packet of “Methamphetamine (ICE)” weighing 640 grams, which they had retrieved from the backside

bumper of the vehicle. The complainant arrested both accused along with the narcotics and brought them with vehicle to the police station, where the case was registered on behalf of the State.

3. The learned counsel for the applicant argued that the applicant/accused is innocent and has been falsely implicated due to the non-payment of illegal gratification. He contended that the alleged contraband material was planted on the applicant and that there is no record indicating the applicant's involvement in offences under the Control of Narcotic Substances (CNS) Act. He further argued that it was actually the co-accused Buxial, who produced the alleged narcotics from the bumper of the car, and that the ANF officials failed to apprehend him, thereby falsely implicating the applicant/accused. Additionally, no private person was associated to act as a mashir, despite the presence of such individuals at the scene, and no CCTV footage was collected by the Investigating Officer (I.O). Therefore, it is a case of further inquiry, and the applicant/accused is entitled to the concession of bail. In support of his contentions, he has relied upon the cases of Zahid Sarfaraz Gill v. The State(2024 SCMR 934) and Muhammad Naseer v. The State(2024 P Cr. L J 868).

4. The learned Special Prosecutor of the ANF opposed the bail application, arguing that the contraband "Methamphetamine (ICE)" was produced by the applicant from the bumper of a vehicle admittedly under his control. He states that there was no delay in lodging the FIR, and the recovered property was promptly delivered to the Chemical Examiner within seventy two hours of the alleged recovery. The

chemical report confirmed that the sample was “Methamphetamine (ICE)”, providing prima facie evidence linking the applicant to the recovery of 640 grams of the substance. The applicant has not denied his presence at the time of the alleged recovery. In his bail application, he admitted of getting a lift from co-accused Gul Hassan, who was driving the car, although he claimed to be unaware of Gul Hassan’s profession. This admission of his presence and the circumstances of the recovery from the bumper of the car weakens his case. The facts of the case law reported in 2024 SCMR 934 are not relevant here because the applicant has admitted to the recovery of the contraband from the vehicle wherein, he was present. The Special Prosecutor further contended that when narcotic substances are recovered from the possession of more than one person, each person is liable for punishment based on the total quantity recovered, as held in *The State through Director ANF Peshawar v. Bashm Ali Khan and others* (PLD 2016 Supreme Court 471). Consequently, the offence committed by the applicant falls under Section 9(2) at Column No. 6 of the table mentioned above, of the Act, which prescribes imprisonment of up to ten years but not less than seven years, along with a fine of up to twelve hundred thousand rupees. Therefore, the bail application is liable to be dismissed. In support of his contentions, he has relied upon the cases of *Bilal Khan v. The State* (2021 SCMR 460) and *Noor Khan v. The State* (2021 SCMR 1212).

5. After carefully considering the arguments made by both parties and examining the records, it is evident that considerable quantity of “Methamphetamine (ICE)”, weighing 640 grams, was recovered from

the vehicle associated with the applicant. This psychotropic substance "Methamphetamine (ICE)" falls under Narcotics Schedule No.1, and the punishment for a quantity exceeding 500 grams is stipulated under Section 9(2) at Column No. 5 of the table mentioned above. Therefore, it is immaterial whether the applicant is a first-time offender or if there is no prior record of his involvement in narcotics trade or transportation. Additionally, the applicant has failed to indicate any evidence suggesting enmity between the complainant or any member of the raiding party and himself. The offense for which the applicant stands charged falls under Sections 6, 9(1), 5(a), 9(2), 14, and 15 of the Act, as the quantity of "Methamphetamine (ICE)" recovered from him exceeds 500 grams. Samples from each packet recovered were promptly sent to the Chemical Examiner, Chemical Laboratory, Sukkur @ Rohri, within seventy two hours, without any delay. The positive chemical report dated 12.03.2024, confirms the contraband material as "Methamphetamine (ICE)".

6. It is important to note that the facts of the case law cited by the applicant's counsel are distinguishable from the present case. The applicant has not denied his presence at the time of the incident, being in the vehicle from which the contraband "Methamphetamine (ICE)" was recovered. In paragraph 03 of the grounds mentioned in the application, the applicant describes the facts as follows:

"3. The applicant got lift from co-accused who was driving alleged car and he was totally unaware about the actual profession of co-accused Gul Hassan."

7. There is no material on record indicating any malicious intent by the ANF officials to falsely implicate the applicant/accused. The Chemical Report supports that the contraband material was "Methamphetamine (ICE)", as defined under the Control of Narcotic Substances (Amendment 2022) Act, 1997.

8. Regarding the quantity of narcotic substance exceeding 500 grams, the punishment prescribed is imprisonment of up to seven years, but not less than five years, along with a fine of up to eight hundred thousand rupees. The recovery of ICE is documented in the recovery memo and the FIR. Additionally, the version of the Recovery Officer is corroborated by witnesses statements recorded under Section 161 Cr.P.C. Thus, the ocular evidence from the Recovery Officer and witnesses to the recovery memo establishes a prima facie connection of the applicant to the offense.

9. Therefore, given the lack of merit in the bail application, it is **dismissed**. It is important to note that the observations made in this order are provisional and shall not affect the merits of the case. These are the reasons of my short order dated 22.07.2024.

J U D G E