

ORDER SHEET  
IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Bail Application No.S-405 of 2024

Applicant: Shabban son of Soobo Bozdar through Mr.  
Muhammad Ali Dayo, Advocate.

The State: Through, Mr. Shafi Muhammad Mahar DPG

Date of hearing: **08.07.2024**

Date of Order: **08.07.2024**

**ORDER**

**Amjad Ali Bohio, J.-** Through instant bail application, applicant Shabban son of Soobo Bozdar seeks post-arrest bail in Crime No.112/2024, registered with Police Station Daharki, for offences punishable under Sections 9 (I), Sr 3(c) CNS Act, 1997.

2. It is alleged that the police party headed by ASI Muhammad Ali Korai during patrolling after receiving spy information apprehended applicant Shabban son of Soobo by caste Bozdar and recovered plastic shopper from his possession containing 2000 grams charas in shape of four slabs out of which four pieces each weighing 100 grams segregated from each slab which were sealed as sample for chemical examination so also cash of Rs.400/- and a small sized knife were recovered from side pocket in presence of mashirs and such memo of recovery was prepared at spot. Subsequently complainant lodged FIR on 05.04.2024 at 2230 hours.

3. Heard learned counsel for the applicant as well as learned DPG appearing for the State and perused the material available on record.

4. Learned counsel for applicant emphasized on the ground that the applicant was arrested on 05.04.2024 and such Criminal Misc. application No.11 of 2024 under section 491 Cr.P.C was filed by his aunt Mai. Inayat wife of Zabardast on 05.04.2024 whereas the applicant/accused was falsely implicated on same date viz. 05.04.2024 at 2350 hours much after filing of the aforementioned habeas corpus application which apparently establishes the case of further enquiry on this sole ground. He has further contended that offence does not fall within prohibitory clause of section 497 Cr.P.C as single sealed parcel purporting to be sample was dispatched for chemical analysis and weight of each slab could not exceeding 500 grams. Lastly he contended that applicant may be granted bail.

5. Conversely, learned DPG, vehemently opposed the grant of bail to the applicant, *inter alia*, on the grounds that huge quantity of 2000 grams charas was recovered from physical possession of applicant/accused at night time, therefore, due to non-availability of private persons, police officials were associated as mahsirs who had no enmity or ill-will against the accused to falsely implicate him. The offence with regard to recovery of 2000 grams charas is punishable upto fourteen years, therefore, the application is liable to be dismissed.

6. Considering the above arguments and the record, it is observed that police party during patrolling received prior information regarding availability of the accused at place of occurrence but they failed to associate any private person to act as mashir. The samples weighing 400 grams were segregated from all four slabs but the same were sealed in a single cloth parcel without mentioning the representation of each slab of the property lying at PS. In such

like situation in case of Ameer Zeb versus The State (PLD 2012 Supreme Court 380), it was observed as under:

9. *In the case in hand 80 cakes/slabs contained in 20 packets kept in 22 baskets had allegedly been recovered from the appellant's possession but according to the prosecution only a "small" and unspecific quantity was taken from every packet as a sample and then those samples were mixed up and made into one sample of 10 grams which was thereafter sent to the Chemical Examiner for analysis. If 80 cakes/slabs had statedly been recovered from the appellant's possession and the total weight of the entire quantity was 20 kilograms then, in all likelihood, each cake/slab weighed about 250 grams. As only one sample of 10 grams had been sent to the Chemical Examiner for analysis and the report in that regard had been received in the positive, therefore, for safe administration of justice it may be concluded that the appellant was liable to be held responsible for having only one cake/slab of charas weighing 250 grams in his possession which offence attracts the provisions of section 9(b) of the Control of Narcotic Substances Act, 1997. In this view of the matter this appeal is partly allowed, the conviction of the appellant recorded and upheld by the learned courts below for an offence under section 9(e) of the Control of Narcotic Substances Act, 1997 is converted into one under section 9(b) of the said Act and, applying the sentencing policy of the Lahore High Court, Lahore laid down in the case of Ghulam Murtaza and another v. The State (PLD 2009 Lahore 362).*

7. To consider main contention raised by counsel for applicant /accused that criminal Misc. Application U/S 491 Cr.P.C was admittedly filed by the aunt of applicant/accused namely Mai Anayat on 05.04.2024 and certified copy of such application is submitted with the above bail application which indicates that it filed during Court hours on 05.04.2024 whereas the applicant/accused is shown to have been arrested for recovery of alleged charas at 2230 hours night falling between 05.04.2024 and 06.04.2024,

therefore, it can hardly be disbelieved that aunt of applicant/accused would have pre-empted the arrest of applicant/accused at 2230 hours as by filing the habeas corpus petition earlier during court hours on 05.04.2024 thereby case against applicant/accused requires further enquiry and contention raised by applicant/accused with regard false implication as contended by learned counsel for applicant/accused could not be ruled out at this stage till it is established through evidence yet to be recorded. All the factors mentioned above support the contention raised by learned Counsel for the applicant and thereby the applicant has made out his case of further enquiry for the purpose of concession of bail in above offence. Therefore applicant is released on bail subject to furnishing solvent surety in the sum of Rs.1,00,000/- (Rupees one lac) to the satisfaction of trial Court and PR bond in the like amount.

8. Needless to mention here that if the applicant in any manner tries to misuse the concession of bail, it would be open for the trial Court to cancel his bail after issuing him the requisite notice.

Above are the reasons of my short order dated 08.07.2024.

**JUDGE**