

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
Criminal Bail Application No. 1043 of 2024

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Date	Order with signature of Judge
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For hearing of bail application

**For hearing and Order: 15.07.2024**

Mr. Muhammad Riaz advocate for the applicant.  
Mr. Khadim Hussain APG, along with Sub-Inspector Imran Shah, PS SIU, Karachi.

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**ORDER**

**Adnan-ul-Karim Memon, J:-** Through this bail application under Section 497 Cr.P.C., the applicant Riaz Khan has sought admission to post-arrest bail in F.I.R No. 54/2024, registered under Section 9(i)3-C, Amended Act at Police Station SIU, Karachi. The earlier bail plea of the applicant on the aforesaid grounds has been declined by the 5<sup>th</sup> Additional Sessions Judge/MCTC Karachi East vide order dated 11.05.2024 in Cr. Bail Application No. 2128 of 2024 on the premise that the applicant was found in possession of charas weighing about 2110 grams.

2. The accusation against the applicant is that on 20.03.2024 he was found in possession of 2110 grams of Charas. The prosecution succeeded in obtaining a chemical report of the narcotics from the chemical examiner, which came in positive, vide letter dated 16.06.2024.

3. It is inter-alia contended that the applicant is innocent and has falsely been implicated in this case with mala-fide intention and ulterior motives; that the place of the incident has been a populated area where private persons were available but the complainant has not associated private witnesses for witnessing arrest and recovery proceedings despite of prior spy information; that no specific role has been assignee by the prosecution he next contended that the all the witnesses are police officials and there is no apprehension to temper with the evidence of PW. He lastly prayed for allowing the bail application.

4. Mr. Khadim Hussain APG, assisted by Sub-Inspector Imran Shah, PS SIU, Karachi has contended that chars weighing about 2110 grams were recovered from conscious possession of the applicant and fall within the ambit of Section 9-C Control of Narcotics Substance Amended Act 2022. He lastly prayed for the dismissal of the bail application.

5. I have heard learned counsel for the parties on the ground of statutory delay as well as the underage of the applicant and have perused the record with their assistance and case law cited at the bar.

6. The accusation against the applicant is that he was arrested with the alleged recovery of charas weighing about 2110 grams from the pocket of his trousers. The question is whether the applicant can be saddled with possession and transporting the narcotics in terms of Section 6/9 C of CNS Act 2022, prima facie this question needs to be taken care of by the trial Court as the Supreme Court in the case of Zahid Sarfarz Gill v The State **2024 SCMR 934** has held that the police and members of the Anti Narcotic Force failed to record or photograph at the time of search of the accused when search, seizure or arrest is made, as the law permits the use of modern device or techniques, however in the present case the police has failed to apply the test so directed by the Supreme Court therefore in all cases about Narcotics, this modern device is required to be used in future cases without fail in terms of the ratio of the decision of the Supreme Court in the case of Zahid Sarfaraz Gill.

7. In principle bail does not mean acquittal of the accused but only change of custody from police to the sureties, who on furnishing bonds take responsibility to produce the accused whenever and wherever required to be produced. On the aforesaid proposition, I am fortified with the decision of the Supreme Court on the case of Haji Muhammad Nazir v. The State (2008 SCMR 807).

8. No doubt, the offense of trafficking the narcotic is a heinous one and affects society at large but it is a settled principle of law that every case is to be decided on its facts and circumstances. Again, in the case of Deputy Director ANF Karachi vs Syed Abdul Qayum, reported in **2001 SCMR 14**, which was later, the Supreme Court ruled that despite the provisions contained in Section 51 of the Control of Narcotic Substances Act, 1997, the Sessions Court and High Court have the power to grant bail. For the sake of convenience and ready reference, the relevant part of the judgment is given below:-

“Moreover, this Court in the case of Gul Zaman V the State reported in 1999 SCMR 1271, has elaborately dealt with the application of sections 496, 497, and 498 Cr.P.C. in view of the bar contained in section 51 of the Act and it has been unanimously held that despite the provisions contained in section 51 of the Act, the Sessions Court and High Court have the power to grant bail.”

9. Since the judgment rendered by the Supreme Court directed to record or take photographs at the time of search of the accused when search, seizure, or arrest is made as the law permits the use of modern devices or techniques but the police failed and neglected to adhere the dicta laid down by the Supreme Court, which is a constitutional command under Article 199 of the Constitution, therefore, appreciating whether the

applicant was arrested with charas from his trousers requires deeper appreciation.

10. In view of the above, the arguments of the learned Prosecutor that the bar contained in Section 51 (1) of CNSA is applicable is without any substance in the light of the ratio of the judgment rendered by the Supreme Court in the case of Zahid Sarfarz Gill supra as the prosecution failed to comply the law laid down by the Supreme Court, which was decided on 22.11.2023 whereas the subject FIR was registered on 20.03.2024, which shows that either prosecution is ignorant the law laid down by the Supreme Court or deliberately avoiding to adhere the principle of law, besides the trial Court has completely ignored the judgment of the Supreme Court, which apathy, therefore, the benefit should go to the accused at the bail stage without touching the merits of the case.

11. I have noticed that the cases of Ateebur Rehman v. The State (2016 SCMR 1424), which involved the recovery of 1014 grams of heroin, and Aya Khan and another v. The State (2020 SCMR 350), which involved the recovery of 1100 grams of heroin, and bail was granted by the Supreme Court in both cases.

12. For what has been discussed above in the preceding paragraphs, without touching the merits of the case, this bail application is accepted and the applicant Riaz Khan is admitted to bail in FIR No. 54 of 2024 of PS SIU Karachi. He shall be released on bail provided he furnishes bail bonds in the sum of Rs.300,000/- (Rupees three lac only) with two reliable and resourceful sureties each in the like amount to the satisfaction of the learned trial Court. However, the learned trial Court shall endeavor to examine the complainant positively within one month and if the charge has not been framed the same shall be framed before the next date of hearing, and a compliance report shall be submitted through MIT-II of this Court. The MIT-II shall ensure compliance with the order within time.

13. The observation recorded hereinabove is tentative and shall not prejudice the case of either party at trial.

JUDGE