

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail App. No. S – 358 of 2024

Applicant : Mst. Firdous W/o Muhammad Hassan, through Mr. Shahid Hussain Gopang, Advocate.

Respondent : The State through Mr. Shafi Muhammad Mahar, Deputy Prosecutor General.

Date of hearing : **05.08.2024**

Date of order : **05.08.2024**

ORDER

Zulfiqar Ahmad Khan, J. – Applicant Mst. Firdous W/o Muhammad Hassan is seeking post-arrest bail in FIR No.64 of 2024, registered under Section 9-C of Control of Narcotic Substances Act, 1997 at Police Station Pir Jo Goth, District Khairpur.

2. Precisely, the allegation against the applicant is that on 16.05.2024 at 06:00 a.m. at link road leading from Rashdi Village to Wada Machiyoon near Peer Gul Hassan Shah, she was apprehended being in possession of 2000 grams of charas, while co-accused Riaz alias Papoo, who was riding a motorcycle, fled away throwing a shopper, in which 1200 grams of charas was found.

3. Learned Counsel for the applicant contended that compliance of Section 103, Cr.P.C. has not been made in this case despite the fact that the police officials were in advance knowledge and the alleged day-time incident took place in a busy / populated area; that actually there is ongoing civil litigation between the applicant and one Naimatullah Mangnejo before Assistant Commissioner, Kingri, and at the instance of said Naimatullah, police involved the applicant in this false case. He, therefore, prayed for granting post-arrest bail to the applicant.

4. Conversely, learned DPG supporting the order passed by the learned trial court, whereby applicant's post-arrest bail was dismissed, prayed that her bail may be dismissed.

5. At the very outset, record reflects that learned State Counsel at a number of occasions has sought time for calling chemical examiner's report, which has still not been produced before this Court. Admittedly, the alleged incident is of 16.05.2024 and despite lapse of a reasonable time,

learned State Counsel has been unable to present the chemical report verifying the nature of the alleged recovered narcotic substance. This delay raises significant concerns regarding the evidentiary basis for continuing detention of the applicant.

6. As per Rule 4(2) of the Control of Narcotic Substances (Government Analysts) Rules, 2001, the samples are required to be despatched for analysis at the earliest, but not later than seventy-two hours of the seizure. Rule 5(3) of the aforesaid rules stipulates that the analyst will ensure that he tests the relevant sample, and in no case, the analysis of a narcotic drug be delayed as the Courts may refuse to extend remand beyond fifteen days in the absence of a chemical report.

7. In light of prolonged delay in obtaining the chemical report and the presumption of innocence until proven guilty, it must be assessed whether continued detention of the applicant, who is a lady, is justified. It is settled principle that an accused cannot be kept in detention indefinitely if the prosecution fails to promptly produce essential evidence. The undue delay in the proceedings or the non-submission of critical reports is to be considered while deciding the bail applications.

8. Therefore, applicant Mst. Firdous W/o Muhammad Hassan is admitted to post-arrest bail in FIR No.64 of 2024, registered at Police Station Pir Jo Goth, District Khairpur for offence punishable under Section 9-C of Control of Narcotic Substances Act, 1997 subject to his furnishing a solvent surety in the sum of Rs.20,000/- (Twenty thousand rupees) to the satisfaction of trial Court.

9. The observations made in this order are tentative in nature and would not prejudice the proceedings before the trial Court.

The bail application stands **disposed of** in the above terms. Above are the reasons of my short order dated 05.08.2024.

J U D G E

Abdul Basit