

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD*****Criminal Bail Application No.S-1097 of 2024***

Applicant: Muhammad Hassan through Mr. Piyar Ali Soomro, advocate.

The State: Through Ms. Sana Memon, Assistant P.G.

Date of hearing: **13.01.2025.**

Date of order: **13.01.2025.**

**ORDER**

**Zulfiqar Ali Sangi, J:** Applicant above-named seeks *post-arrest bail* in F.I.R No.**54/2024**, registered at Police Station Khorwah, Badin, for offences punishable under Section 9-C CNS Act, 2022. Previously he applied for the same relief before learned Special Judge CNS/Sessions Judge Badin but the request was declined vide order dated 19.09.2024.

2. Concisely, the facts of the prosecution case, as per FIR, are that on 02-09-2024 at 1700 hours, the applicant/ accused was arrested by a police party of P.S Khorwah headed by ASI Shahbaz Haris Memon from Karachi main road near Check Post Khorwah and chars weighing 1020 grams was recovered from beneath of driving seat of the car. Such FIR was lodged.

3. The bail is sought by contending that the applicant/ accused is innocent and he has been falsely implicated in this case. No private witnesses were cited in the case and the same appears to be a violation of mandatory provision of S.103 Cr.P.C, though the place of alleged incident is a busy road. The alleged offence is not punishable with death or imprisonment for life, therefore, does not fall within the ambit of prohibitory clause of S.497(1) Cr.P.C. The applicant/ accused is in judicial custody and he is no more required for further investigation. All the PWs are police officials, hence they are interested and hostile therefore there is no probability of tampering with the evidence.

4. The bail plea of the applicant has been opposed by the Learned APG on the grounds that applicant/accused is nominated in FIR and huge quantity of narcotic substance has been recovered from his his car; that the offence is punishable for upto fourteen years imprisonment but

shall not be less than nine years alongwith fine, therefore, falls within the ambit of prohibitory clause of S.497 (1) Cr.PC. No malafide on the part of police for false implication of applicant/ accused has been established.

5. I have heard the learned counsel for the parties and gone through the material available on record with their able assistance.

6. It reflects from the record that the applicant/accused was apprehended at the spot and Charas was recovered from him. The entire recovered quantity of narcotics was sent to the laboratory for analysis, and the chemical examiner confirmed it as "Charas." The report is available in the police file.

7. The offences for which the applicant is alleged to be involved fall under the prohibitory clause of Section 497 of the Criminal Procedure Code (Cr.P.C.). Furthermore, Section 51 of the Act stipulates that bail shall not be granted to an accused person charged with an offence under this Act. Similarly, discretion under Section 497 Cr.P.C. cannot be exercised in relation to offences punishable by death, life imprisonment or imprisonment for ten years unless the court is satisfied at the outset that the charge appears to be false or groundless. The Supreme Court in the case of *The State vs. Javed Khan* (2010 SCMR 1989) has made the following observations in a narcotic case:-

***“4. Having gone through the above provisions of law, we do not feel persuaded to agree that the case of the petitioner will not fall within prohibitory clause of section 497, Cr.P.C, but it shall be covered by section 9(c), providing for various sentences as reproduced above, which not only squarely fall within prohibitory clause of section 497 Cr.P.C but also attract the bar contained in section 51(1) of the Act of 1997, specifically made applicable to those offences which, inter alia, provide for punishment of death sentence. For ease of reference, the said provision of law is reproduced as under:-***

***“51(1). Notwithstanding anything contained in sections 496 and 497 of the Criminal Procedure Code, 1898 (V of 1898) bail shall not be granted to an accused person charged with an offence under this Act or under any other law relating to narcotics where the offence is punishable with death.”***

***When the law makers have provided some special provision in the statute to bar the jurisdiction of special Court established under the said enactment, due weight is to be given to such special provision of law as against general principles governing such cases, when accused approaches the Special Court or the High Court for grant of bail, as in the instant case.***

***5. Looking to the admitted facts of the case of respondent and the above discussed clear legal position, the approach of High Court in releasing the respondent on bail on the above referred ground, seems to be arbitrary, without application of mind and, contrary to settled principles of law, thus unsustainable.”***

8. The Honourable Supreme Court in another case has observed, while considering the offences punishable under the CNS Act to be heinous in nature against the society at large, in the judgment in the case titled Socha Gul vs. State 2015 SCMR 1077, as under :-

***It is pertinent to mention here that offences punishable under C.N.S. Act of 1997 are by its nature heinous and considered to be the offences against the society at large and it is for this reason that the statute itself has provided a note of caution under section 51 of C.N.S. Act of 1997 before enlarging an accused on bail in the ordinary course. When we refer to the standards set out under section 497, Cr.P.C. for grant of bail to an accused involved in an offence under section 9(c) of C.N.S. Act of 1997, even on that basis we find that an accused charged with an offence, prescribing various punishments, as reproduced above, is not entitled for grant of bail merely on account of the nature or quantity of narcotic substance, being four kilograms. Firstly, as deeper appreciation of evidence is not permissible at bail stage and secondly, in such situation, looking to the peculiar features and nature of the offence, the trial Court may depart from the normal standards prescribed in the case of Ghulam Murtaza (supra) and award him any other legal punishment. Thus, in our opinion, ratio of judgment in the case of Ghulam Murtaza (supra) is not relevant at bail stage.***

9. In view of above position, discussion and circumstances, the applicant/accused failed to make out his case for grant of bail. Consequently, his bail application is dismissed.

10. The observation made hereinabove are tentative in nature shall not prejudice the case of either party at the trial.

J U D G E

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