

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Application No. 1841 of 2024

<i>Date</i>	<i>Order with signature of Judge</i>
Applicant Mashooque Ali son of Muhammad Hassan	: through Ms. Ambreen, Advocate
The State	: Through Ms. Rubina Qadir, Deputy Prosecutor General, Sindh.
Date of hearing	: 08.10.2024
Date of order	: 08.10.2024

ORDER

Muhammad Saleem Jessar, J:- Through this bail application, applicant Mashooque Ali son of Muhammad Hassan seeks his release on post arrest bail in Crime No.80 of 2024 registered with P.S Chuhar Jamali, for offence punishable to Section 9(i), 3-C of CNS Act, 1997. The applicant preferred his bail plea before the trial Court which by means of order dated 30.07.2024 was declined. Hence, this application has been maintained.

2. The crux of the prosecution case as unfolded in the FIR are that on 26.07.2024 at about 0700 hours, applicant / accused was arrested by the police party headed by SIP Shoukat Ali of P.S Chuhar Jamali, near Sheedi Hotel on road leading to Shahbandar, on being found in possession of 2000 grams of charas, for which he was booked in aforesaid FIR.

3. **Heard arguments, record perused.**

4. Section 9 (1) of the Act provides punishment with imprisonment up to fourteen years and not less than nine years for possessing, importing, or

exporting and trafficking 'charas' in contravention of Section 6, 7 and 8 of the Act for more than 1000 grams and up to 4999 grams in quantity. At the stage of bail, the lesser of two punishments is to be taken into consideration, as the quantum of punishment could only be decided by the trial Court after recording of evidence. Reference can be had from the case of *SHAHZORE Versus THE STATE* (2006 YLR 3176).

5. Per enactment of the CNS Act, 1997, as amended on 06.09.2022, the Legislature itself provided punishment as "may extend to 14 years and not less than 9 years". It is settled principle of law that when statute provides two punishments, the lesser one should be considered particularly at bail stage. In instant case, the law provides two punishments and other one is 9 years which did not exceed the limits of prohibitory clause of section 497(i) Cr.P.C. In such like cases, bail becomes right while refusal will be an exception.

6. Admittedly, the applicant is not a previous convict and mere CRO or pendency of series of the cases would not intercept the way to withhold concession of bail, if otherwise he has made out a good prima facie case for his release on bail. He is confined in jail since the day of his arrest. The law is very liberal especially when it is salutary principle of law that in the cases where the offences carrying lesser punishment which does not fall within the prohibitory clause of Section 497 Cr.P.C, the grant of bail is a rule while its refusal is merely an exception.

7. It is settled law that every accused would be presumed to be blue eyed boy of the law until and unless he may be found guilty of alleged charge; and law cannot be stretched upon in favour of the prosecution particularly at bail stage.

8. Under these circumstances, the case of the applicant falls within the scope of bail as contemplated by Section 51 (2) of the Act read with Section 497 (2) Cr.P.C and requires further inquiry. Consequently, instant bail application is hereby allowed. Applicant **Mashooque Ali son of Muhammad Hassan** shall be released on bail subject to furnishing his solvent surety in the sum of Rs.100,000/- (Rupees Thirty Thousands Only) and PR Bond in the like amount to the satisfaction of learned trial Court.

9. It may be pertinent to mention here that the observation(s) made hereinabove is/are tentative in nature and shall not prejudice the case of either party during trial. However, if the applicant is found misusing the concession of bail, learned trial Court would be competent to proceed against him as well his surety, according to law.

JUDGE

Zulfiqar/P.A