

IN THE HIGH COURT OF SINDH CIRCUIT COURT,
HYDERABAD.

Criminal Bail Application No.S-1166 of 2024.

Applicant: Mst. Zainab @ Jamna through M/s. Naeem Uddin Sahito and Noman Aftab advocates.
The State: Through Ms. Sana Memon, Assistant Prosecutor General, Sindh, along with complainant SIP Muhammad Ali Arain.
Date of hearing: 01.11.2024.
Date of reasons: 04.11.2024.


ORDER

Khadim Hussain Soomro, J: Through the instant Criminal Bail Application, the above-named applicant seeks post-arrest bail in Crime No. 278/2024, registered under Section 9(1) 3 (c) of the C.N.S. Amendment Act, 2022, at PS B-Section, Latifabad, Hyderabad. The applicant's bail plea was previously declined by the learned Model Criminal Trial Court-I/1st Additional Sessions Judge/Special Judge C.N.S Hyderabad, vide order dated 04.10.2024.

2. Brief facts of the prosecution case are that on 30.09.2024 at 2200 hours, a police party of PS B-Section Latifabad, Hyderabad, headed by SIP Muhammad Ali Arain along with his subordinate staff on receiving spy infoamation arrested the applicant and recovered 1166 grams of charas from her possession.

3. Learned counsel for the applicant submits that the applicant/accused is a victim of police highhandedness; that the applicant/accused is a respectable Parada Nasheen lady and a law-abiding citizen with a good respect and reputation in the society; that on 30-09-2024 at around 08:00 pm, the complainant party/police officials of Police Station B-Section unlawfully entered the applicant's residence by climbing over the wall and forcefully opened the door without search warrant or presence of any female police officers, they intrusion disregarded the privacy and sanctity of the home which leads to physical assault and then applicant/accused was forcibly taken away from her




4/11/24

residence without any justification. When the applicant's party approached the concerned Police Station of B-Section, they discovered that applicant/accused had been booked in the alleged case; and, that the complainant had deliberately failed to involve any independent witnesses to act as mashir in this case, despite the fact that the alleged place of the incident is a main road in a densely populated area, as such, this is a clear violation of the mandatory provision of Section 103 Cr. P.C, necessitating further inquiry into the case; that co-accused Mst. Sakina has already been granted bail by the learned 1st Additional Sessions Judge, Hyderabad.

4. The bail plea of the applicant has been opposed by Learned A.P.G. on the grounds that the applicant/accused is nominated in F.I.R. and a huge quantity of narcotic substance has been recovered from her exclusive possession; that no malafide on the part of police for false implication of the applicant/ accused has been established; that other cases of similar nature have been registered against the applicant, therefore, she is not entitled to grant of bail.

5. I have heard learned counsel for the applicant as well as A.P.G. for the State and have gone through the material available on record with their able assistance.

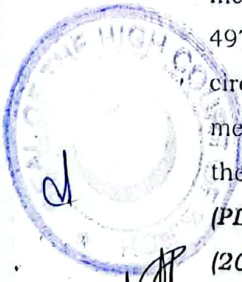
6. Admittedly, the applicant/accused was arrested from the street behind Uroosi Hall, Unit No.6 Latifabad, which is a thoroughfare from where the alleged recovery of 1166 grams of charas had taken place, but the complainant/police official does not record or photograph the search, seizure, or arrest procedures. Article 164 of the Qanun-e-Shahadat, 1984, explicitly allows the use of evidence obtained through modern devices or techniques. Article 165 of the said law supersedes all other laws in this regard. The police officers are generally equipped with cell phones containing built-in cameras and in this case modern devices so also cameras have not been used. In this context, I am fortified with the case of *Zahid Sarfraz Gill vs. The State (2024 S C M R 934)*, in which the apex Court has observed that Section 25 of the C.N.S. Act 1997, exempts the application of Section 103 of the Code of Criminal Procedure, 1898, which mandates the presence of two or more respectable local inhabitants during a search. Nevertheless, it is unclear why the police and Anti-Narcotics Force (A.N.F.) members do not record or photograph the search, seizure, or arrest procedures. Article 164 of



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4/11/24

the Qanun-e-Shahadat, 1984, explicitly allows the use of evidence obtained through modern devices or techniques, and Article 165 of the same law supersedes all other laws in this regard. In narcotics cases, prosecution witnesses are typically personnel from the Anti-Narcotics Force (A.N.F.) or police officers, who are generally equipped with cell phones containing built-in cameras. Given that the witnesses in such cases are predominantly government officials and there are usually few witnesses, trials often experience unnecessary delays. Consequently, the accused frequently seek bail initially from the trial court; if denied, they escalate their request to the High Court, and if still unsuccessful, they approach the Supreme Court. The use of mobile phone cameras by the police and A.N.F. to document the search, seizure, and arrest could serve as substantial evidence. Such recordings or photographs would help substantiate the presence of the accused at the crime scene, demonstrate possession of the narcotic substances, and validate the procedures of search and seizure. Moreover, this practice could mitigate false allegations against A.N.F. or police officials of fabricating evidence for ulterior motives.

7. It is worthwhile to observe here that the first proviso to Section 497(1) of the Criminal Procedure Code (**Cr.P.C.**) stipulates that the Court may order the release on bail of any person under the age of sixteen years, any woman, or any person who is sick or infirm, who is accused of an offence. The term "such an offence" in this proviso refers to offences listed under the second part (prohibitory clause) of Section 497(1), Cr.P.C., as for all other non-bailable offences, the Court is already empowered to grant bail under the first part of Section 497(1), Cr.P.C. Therefore, the first proviso grants the Court the same discretion to grant bail in respect of offences covered by the prohibitory clause against accused persons who are under the age of sixteen, women, or those who are sick or infirm, as it does under the first part of Section 497(1). This means that, for the persons mentioned in the first proviso to Section 497(1), bail should generally be granted and refused only in exceptional circumstances. No exceptional circumstance exists in the present case, meriting dismissal of the instant bail application. In respect to the above, the reliance can be placed to the cases of *Tahira Batool vs. The State* (PLD 2022-764), *Asiya v. State* (2023 SCMR 383), *Ghazala v. State* (2023 SCMR 887) and *Munawar Bibi v. State* (2023 SCMR 1729).



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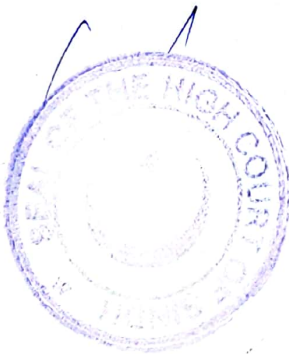
8. As far as the argument of the learned A.P.G that other cases of similar nature have been registered against the applicant is concerned, mere registration of other criminal cases against an accused does not disentitle her for the grant of bail if on merits she has prima facie a good case for enlargement of bail. Reliance is placed on the reported cases of *Moundar and others v. The State (PLD 1990 SC 934)*, *Muhammad Rafiq v. State (1997 SCMR 412)*, *Syeda Sumera Andaleeb v. The State (2021 SCMR 1227)*, *Nazir Ahmed alias Bhaga v. The State (2022 SCMR 1467)* & *Ali Anwar Paracha V. The State and another (2024 SCMR 1596)*.

9. In view of above reasons, I am of the opinion that the applicant has made out her case at this stage for further inquiry. Consequently, this bail application was allowed by my short order dated 01.11.2024, whereby the applicant was admitted to bail and these are the reasons of my earlier short order.

10. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the case of the applicants on merits.

Sd/- KHADIM HUSSAIN SOOMRO.

JUDGE. 4/11/24.



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