

ORDER SHEET  
IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD

Cr. Bail application No.S- 364 of 2016

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DATE	ORDER WITH SIGNATURE OF JUDGE
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10.10.2017.

Mr. Ayaz Hussain Tunio Advocate for applicant/accused.

Mr. Amjad Ali Sehto Special Prosecutor ANF.

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ABDUL MAALIK GADDI, J : Applicant/accused Having remained unsuccessful in obtaining his release on bail from the trial court in crime No.D040400116 of 2016 registered U/s 6, 9-C CNS Act 1997 by Anti Narcotics Force Hyderabad. Now applicant/accused Muzaffar Ali so Nihaluddin Noonari is seeking his release on bail through instant bail application.

2- The allegations of prosecution against present accused as per FIR are that on 11.01.2016 while the complainant SHO/Inspector Muhammad Naseer of A.N.F Hyderabad was on patrolling duty vide entry No.9, he received spy information that a person namely Muzaffar was standing and waiting at Shell petrol pump near Muhammadi Morr with a huge quantity of Narcotics to deliver the same to his specific customers. Upon such information complainant party alongwith informer reached at pointed place at 1500 hours where they saw a person holding black shopper in his left hand was standing who on seeing the police party in uniform tried to run upon pointation of spy, but he was apprehended alongwith said shopper with the help of staff. The persons available at the place

of incident were asked to be act as mashirs, but they refused due to passengers, then ultimately HC Abdul Hameed and PC Kashan Ahmed were nominated as mashirs and the apprehended person was enquired about his parentage who disclosed his name as Muzaffar Ali Noonari s/o Nihaluddin by caste Noonari resident of Goth Adal Noonari Tapal Ghar Husri Taluka & district

Hyderabad. The black shopping bag was secured from the apprehended person which was checked wherein two multi colour foil pack packets of charas were found. The recovered foil pack packets were weighed collectively through electronic scale, which became 2-KGs (Gross). The recovered charas was sealed in white cloth bag alongwith the black shopper for chemical analysis. From further personal search of the apprehended person cash Rs.480/- were recovered from right side pocket of his wearing shirt.

3- It is stated by learned counsel for applicant/accused that applicant/accused is innocent and has been falsely implicated in this case. He pointed out that at the time of incident which took place in a busy place but no private person was associated as mashir of recovery. It is also stated that applicant/accused has not committed any offence as alleged in the FIR. It is further stated that no recovery was affected from the possession of applicant/accused. He further pointed out that complainant has violated the provision of section 103 Cr.P.C by not associating the private independent witnesses from the place of incident, though it was day time incident. He also pointed out that applicant/accused was arrested from tyre shop from Tando Jam which was also published in daily Express dated 12.01.2016. He has submitted that case has been challaned and applicant/accused is no more required for further investigation.

4- Conversely learned SPP for the ANF has opposed the grant of bail to applicant/accused. He submits that public persons are not cooperative with the police. He pointed out that applicant/accused was arrested with a considerable quantity of Charas i.e 2-Kilograms and such considerable quantity cannot be said

to be foisted upon applicant/accused. He further pointed out that narcotics cases are excluded from the applicability of section 103 Cr.P.C. He also pointed out that offence punishable U/s 9-C CNS Act falls under prohibitory clause of section 497(i) Cr.P.C.

5- Arguments heard and perused the record.

6- It is an admitted position that case has been challaned, applicant/accused is no more required for investigation and admittedly the case of prosecution based upon the evidence of ANF officials, therefore, no question does arise for tampering their evidence at the hands of applicant/accused. Since whole the case of prosecution rest upon the evidence of ANF officials, therefore, their evidence is required to be minutely scrutinized at the time of trial whether offence as alleged in the FIR, allegedly committed by the applicant/accused in a fashion as narrated by the complainant or otherwise. There is nothing on record to show that applicant/accused is previous convict or has been arrested in a case of similar nature in past.

7- It appears from the record that complainant SHO/Inspector Muhammad Naseer has also acted in this case as Investigating Officer. Although the investigation of the complainant who himself conducted investigation is also admissible in evidence yet for the safe administration of justice, he should have entrusted the investigation to some other disinterested officer so that nobody raised any finger on the investigation, therefore, on this ground also it is yet to be determined by the trial court whether investigation carried out by the complainant who himself acted as Investigating Officer of the case can safely be relied upon or otherwise. Therefore, on this ground only the case of applicant/accused requires further inquiry. The applicant/ accused is behind the bars for the last 20-months without any substantial progress in the matter. During the course of arguments when I have specifically asked from the Special Prosecutor ANF that whether present applicant/accused is previous convict or he has been arrested in the similar nature case in the past, he replied in negative. As the challan has already been submitted against applicant/accused and

applicant/accused is appearing before the trial court without conclusion of the trial for the last 20-months, therefore, applicant/ accused has been succeeded to make out his case for grant of bail

8- In view of above, I allow this bail application and admit the applicant/accused on bail after furnishing his surety in the sum of

Rs.100,000/- (Rupees One lacy thousand only) and PR bond in the like amount to the satisfaction of learned trial court.

9- Be that as it may, it is made clear that the observations made herein above, if any, are tentative in nature and shall not affect the merits of the case.

JUDGE

A.Rasheed