

IN THE HIGH COURT OF SINDH AT KARACHI

Before: Mr. Justice Mohammed Karim Khan Agha

Cr. Bail Application No. 552 of 2017

Muhammad Shakeel s/o Aziz ur Rehman

Vs.

The State

Date of hearing:	22.06.2017
Date of Order	23.06.2017
Applicant:	Through Mr. Abdul Hameed, Advocate.
State:	Through Mr. Habib Ahmed, Special Prosecutor A.N.F.

ORDER

Mohammad Karim Khan Agha J: Through instant bail application, the applicant/accused namely, Muhammad Shakeel son of Aziz ur Rehman has sought post arrest bail in F.I.R. No. 64/2016 under section 6/9-C, 14/15 Control of Narcotic Substances Act, 1997 (CNSA) registered at P.S. ANF M. Ali Society, Karachi.

2. The brief facts of the case according to the contents of the FIR are that the complainant received an information from his high ups that a notorious narcotic seller Kishwar Khan son of Amanullah r/o Lal Khoti, Mansehra Colony, Landhi, Karachi through his special agent Muhammad Shakeel s/o Aziz ur Rehman will hand over a huge quantity of narcotic to his special customer today at evening time i.e. 6-00 pm to 7-00 pm at Murtaza Chowrangi, Data Darbar Hotel Industrial Area, Karachi. On receipt of such information he alongwith his subordinates as well as spy

informer at 1730 hours left PS and reached at about 1815 hours on the pointed place where they started surveillance and saw that one person having blue colour shopper in his right hand was coming by-foot from Mansehra Colony and stopped near Murtaza Chowrangi, Data Darbar Hotel to whom spy informer pointed out to be the concerned person, therefore they apprehended him. The complainant asked the people available there to act as witness but they refused to act as witness. Then he cited A.S.I. Zaheer Iqbal and PC Raja Iftikhar as mashir. On inquiry accused disclosed his name as Muhammad Shakeel son of Aziz ur Rehman r/o House No.16, Street No.16, New Sher Pao Colony, Landhi No.22, Karachi. In presence of mashirs a blue colour shopper was secured from his right hand and when the same was opened four packets of charas wrapped with yellow colour salutation tape were secured and recovered. The packets were cut open and were found to contain charas in shape of slabs. The complainant weighed the same on the spot with electronic scale out of which the weight of three packets was found to be one kilogram each and the weight of the remaining one packet was weighed and found to be 500 grams. Thus total weight of recovered charas amounted to 3.5 Kilograms. The complainant put the same alongwith blue colour shopper in cloth bag and sealed the same on the spot for the purpose of chemical examination. From the personal search of the applicant Rs.1200/- was recovered from right side pocket of his shirt. On further inquiry from the applicant he disclosed that the charas belongs to one Kishwar Khan. The complainant arrested the applicant in presence of mashirs and prepared such mashirnama of arrest and recovery on the

spot. Thereafter the complainant took the applicant and the recovered charas to the PS where he lodged FIR against the accused and Kishwar Khan under section 6/9 CNSA.

3. After usual investigation, the challan was filed and the matter is now pending before the trial court.

4. In essence learned counsel for the applicant argued that the applicant was innocent, the narcotics had been foisted on him, there were no independent mushirs and there was no material to connect him with the commission of the offense and as such for all the above reasons the applicant was entitled to post arrest bail. In support of his contentions learned counsel placed reliance on the following authorities; **Ali Hassan @ Hasan v. The State** (2014 YLR 188 (Sindh)), **Sartaj v. State** (PLJ 2014 Cr.C. (Peshawar) 700), **Makhdoom Sajjad v. The State** (SBLR 2014 Sindh 1514 (Sindh)), **Liaqat Ali v. The State** (2014 MLD 392), **Malang v. The State** (2017 MLD 303) and **Qamar Zaman v. The State** (2017 YLR 874).

5. On the other hand learned Special Prosecutor ANF vehemently opposed the bail application and contended that there was sufficient material on record to connect the applicant to the offense for which he has been charged and as such the post arrest bail application of the applicant should be dismissed. In support of his contentions he placed reliance on the following authorities; **Socha Gul v. The State** (2015 SCMR 1077) and **Afzal Ahmed v. The State** (2003 SCMR 573).

6. I have considered the arguments of the learned counsel

for the applicant and the special prosecutor ANF, perused the record and considered the relevant case law.

7. I am of the considered view that the applicant has not made out a case for post arrest bail for the following reasons; that the applicant's bail before the trial court has already been dismissed by a well-reasoned order dated 20-03-2017 which requires no interference with; that the applicant was caught red handed with a huge amount of charas; that such a large quantity of charas was unlikely to have been foisted on him especially as there is no allegation of any enmity between the applicant and the ANF officials who arrested him; that the chemical report has proved positive; that the amount of the recovery brings the offense within the prohibitory clause; that as per findings of the Supreme Court in the case of **Socha Gul V The State** (SCMR 2015 1077) (which distinguished **Ghulam Murtaza's case** (Supra) in terms of the use of the sentencing guidelines for the grant of bail) it was held that bail should be granted sparingly in narcotics cases bearing in mind Section 51 of the Control of Narcotic Substances Act 1997 and the fact that as per **Socha Gul's case** (Supra) the offense **amounts to a crime against society**; the fact that no independent mushirs were present in my view is not of huge significance at this stage of the case bearing in mind Section 25 of the CNSA which being a special law has exempted their presence in narcotics cases and especially in this case as there has been no allegation of any enmity between the applicant and police officials, as per the FIR the police officials attempted to associate independent individuals from the locality who refused and the lack of

malafide of the police is further shown by the fact that they also arrested and challoned Kishwar Khan who the applicant stated the charas belonged to. In my view the authorities relied upon by the applicant are of little, if any, assistance to him based on the particular facts and circumstances of this case and can be distinguished; that in my view there is sufficient material on record to connect the applicant to the commission of the offense for which he has been charged.

8. As such for the above reasons the applicant's application for post arrest bail is dismissed

9. I observe however that the applicant has been in custody for over 8 months and that the charge has not as yet been framed and according to the special prosecutor for the ANF only 2 PW's will record their evidence in this case. As such I direct the trial court to decide this matter within 3 months of the date of this order. The office is directed to immediately send a copy of this order to the concerned trial court for compliance.

10. Needless to say that this order shall have no effect on the trial proceedings which will be decided on merit by the learned trial judge based upon the evidence placed before it.

11. The bail application stands disposed of in the above terms.