

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Bail Application No. S- 387 of 2017

Asmat Ali Shah.....Applicant.

Versus.

The State..... Respondent

For Hearing of bail application.

Mr. Mehfooz Ahmed Awan Advocate for the applicant.

Mr. Shafi Muhammad Mahar, Deputy P.G for the State.

Date of hearing: 02-04-2019

Date of decision: 02-04-2019

ORDER

ZAFAR AHMED RAJPUT J. Through instant Crl. Bail Application, applicant/accused Asmat Ali Shah son of Atta Muhammad Shah seeks post-arrest bail in Crime No. 55 of 2016 registered at P.S, Baiji Sharif under Section 9(c) of the Control of Narcotics Substance Act, 1997 (hereinafter referred to as “the Act”). His earlier application for grant of bail bearing No. 805 of 2017 was heard and dismissed by learned Sessions Judge, Sukkur vide order dated 23.06.2017.

2. Briefly stated, the facts of the case are that on 04.11.2016, SIP- Muhammad Ilyas of P.S, Baiji Sharif lodged aforementioned F.I.R alleging therein that while he was busy in snap checking at National Highway near Pir Wah bridge along with subordinate staff, he stopped one Mehran car bearing No. AA-3675 of white colour coming from Punjab side wherein four persons were sitting. He seeing them in suspicious condition enquired about their names and addresses in presence of Mashirs ASI-Ali Hassan and P.C- Manzoor on that the

person who was driving the car disclosed his name as Naimatullah resident of district Pashin, while other three persons disclosed their names as Sirajuddin son of Sardar Muhammad, Asmat Ali Shah son of Atta Muhammad Shah, both resident of Pashin and Abdul Qadir son of Abdullah resident of Quetta. Thereafter, from the search of the car, police recovered total 45 KGs Charas from the cavities and dickie (trunk) of the car and brought all the four accused persons at PS where F.I.R was lodged against them.

3. Learned counsel for the applicant has mainly contended that the applicant is innocent and has falsely been implicated in this case; that applicant had no knowledge about such contraband lying in the vehicle, as such he has no concern with the alleged recovery; that co-accused who was driving the car was in possession of it so also alleged Charas; that had the alleged Charas was lying open in the car, situation would have been different; that the prosecution has simply shown the presence of the applicant in the vehicle which would not involve him in the commission of alleged offence without establishing first the fact that he was having conscious knowledge and possession of the alleged Charas, hence guilt of the applicant requires further enquiry as envisaged under Sub-Section 2 of Section 497 Cr.P.C In support of his contentions, learned counsel has relied upon case-law reported as Sanaullah v. The State (**2012 YLR 1115**), Ayub Khan v. The State (**2012 YLR 1015**), Muhammad Ramzan v. The State (**2006 YLR 3095**) and Muhammad Faisal v. The State (**2006 YLR 3039**).

4. On the other hand, learned Deputy P.G has vehemently opposed the grant of bail to the applicant on the grounds that a huge quantity of Charas has been recovered from the vehicle in which he was travelling along with three co-accused; that out of four accused persons, three belong to Pashin and fourth one is from Quetta, hence it cannot be presumed that the accused persons including present applicant were not having any knowledge about lying of Charas in the secret cavities and dickie of the car; that the alleged recovery has been effected in presence of official witnesses against whom no ill-will or enmity has been pleaded by the applicant.

5. Heard learned counsel for the applicant as well as learned Deputy P.G and perused the material available on record with their assistance so also case-law cited by learned counsel for the applicant.

6. As per prosecution case, 45 KGs Charas has been recovered from the secret cavities and dickie of the car. The applicant along with other three co-accused is facing the charge under Section 9(c) of the Act. The punishment provided in clause-C for possessing narcotics drug, psychotropic substance and controlled substances exceeds one KGs is either for death, imprisonment for life or for a term which may extend to 14-years with fine which may be upto one million rupees. In the instant case, representative samples of Charas was sent to the Chemical Examiner on the 4th day of the alleged recovery for chemical analysis, whose report in this regard is positive.

7. While considering the submissions made by learned counsel for the applicant, I have tentatively found that search was made by SIP-Muhammad Ilyas in presence of Mashirs ASI-Ali Hassan and P.C-Manzoor Ahmed against whom no enmity has been alleged by the applicant. The presence of the applicant in the car at the time of alleged recovery has not been denied by the applicant, however, learned counsel has pleaded that the applicant was not having conscious knowledge and possession of the alleged Charas, which is not conceivable for the reasons that the applicant was travelling in the vehicle as an associate of co-accused, out of them three including driver accused belong to same area of Balochistan Province, namely Pashin.

8. So far the case-law cited by the learned counsel for the applicant are concerned, the same are not applicable in the case of the applicant being on distinguishable facts. I am, therefore, of the view that prima facie sufficient material is available on record to connect the applicant with the commission of alleged offence and no case for granting bail to him has been made out, hence instant Crl. Bail Application is dismissed accordingly.

9. Needless to mention here that the observations made hereinabove being tentative in nature would not influence the trial Court while deciding the case of the applicant on merits.

JUDGE