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ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA
1st Cr. Bail Application No. S-475 of 2017

DATE

ORDER WITH SIGNATURE OF JUDGE

For Hearing of Bail Application

23.10.2017

Mr. Ghulam Ali J. Rind, Advocate for the applicant along with applicant.
Mr. Sardar Ali Shah, APG for the State.

The applicant Habibullah Pathan seeks his admission on pre-arrest bail in Crime No. 62/2017 registered with Police Station Saddar (Jacobabad) for offence under section 9 (c) Control of Narcotic Substances Act, 1997. The bail plea on his behalf was preferred before the learned Sessions Judge/ Special Judge Narcotic Substances, Jacobabad but his request was turn down by order dated 26.09.2017. The case has already been challaned by police and same is now pending for trial before the Court of Sessions/Special Judge, Control of Narcotic Substances Act, Jacobabad vide Special Case No.31/2017 re. State v. Khalil and others.

2. The crux of prosecution case as unfolded by SIP Ishtiaq Ahmed Pathan in his F.I.R on 20.5.2017 is that they were assigned the duty upon the directions of their superiors for checking the vehicle plying up & down. On fateful day at 1400 hours they saw a Van bearing No. BMA/207-SIBI coming from Balochistan side and was signaled to stop but the driver did not stop it. The complainant along with his subordinates followed the Van at Govt. Vehicle at the distance of about half kilometer when driver parked the vehicle. Out of which, three persons alighted and made their escape good by decamping towards eastern side. When driver attempted to slip away, he was apprehended by the complainant with the help of his subordinates. The Van was inspected and found below detailed white colour sack lying underneath of cleaner side seat containing 30 slabs which on smell found to be of charas. The police suspected therefore, entire Van was searched. Four CNG Cylinders were installed in the Van. On enquiry driver disclosed his name Khalil

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Ahmed while the persons who escaped away disclosed that two of them were his brothers namely Noor Ahmed and Deenar Khan and 3rd one was Ahmed Ali son of unknown being the transporters of Charas. The contraband was weighed on spot through computerized scale which became 84 KG and 168 patties from personal search of arrested accused Khalil Ahmed. Such mashirnama of arrest and recovery was prepared in presence of mashirs whereafter accused and the property was brought at Police Station Saddar, Jacobabad where such case was registered on behalf of the State.

3. It has been contended by learned counsel for the applicant that the applicant is innocent and has been falsely implicated in this case by the police as the name of the applicant does not find place in the F.I.R; nor in 161 Cr.P.C statements of the P.Ws. He further contends that after the delay of 10 days the name of the applicant/accused is shown to have been disclosed by the co-accused Khalil Ahmed, the driver of the Van. He further contends that no confessional statement of the accused Khalil Ahmed was recorded before the Magistrate. He lastly contended that the number of four accused persons is mentioned in the F.I.R but the I.O has shown the name of applicant which clearly indicates malafide intention on the part of police, hence the applicant deserves concession of pre-arrest bail.

4. Learned APG has very candidly conceded to the arguments of learned counsel for the applicant and recorded no objection for confirmation of interim bail to the applicant.

5. I have heard learned counsel for the applicant as well as learned APG for the State. The record reveals that name of the applicant does not transpire in the FIR nor in 161 Cr.P.C statements of the prosecution witnesses who are police officials. The statement of co-accused Khalil Ahmed after the delay of ten days recorded by the police/I.O clearly indicates malafides on the part of police. The statement of co-accused is not admissible under the law rather it is in contravention of Articles 38

and 39 of the Qanoon-e-Shahdat Order, 1984. Moreover, at the time of his arrest co-accused Khalil did not disclose the name of applicant and at later stage, his implication smells malafide on the part of police. No direct evidence or any tangible material has been collected to connect the applicant with alleged commission of offence. Hence condition prescribed by the Honourable Supreme Court in the case of Murad Khan v. Fazle-e-Subhan PLD 1982 SC 83 and case of Rana Muhammad Arshad v. Muhammad Rafique & another PLD 2009 SC 427 are fully attracting in this case. All the P.Ws are police officials hence there is no chance of tampering the evidence. Therefore, case against the applicant requires further enquiry. In the circumstances, no useful purpose would be served out if the applicant is remanded to jail instead of admitting him to pre-arrest bail.

6. In view of the above and the dicta laid down by the Honourable Supreme Court in the aforementioned cases, the applicant has been able to make out a case for grant of bail. Consequently, instant bail application is allowed, interim pre-arrest bail granted to the applicant vide order dated 04.10.2017 is hereby confirmed on the same terms and conditions. Let facsimile copy of the order be sent to learned trial Court for compliance.

93/4/2017
Judge

Abid H Qazi/**