

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
1st Cr. Bail Appln. No. 5-32 of 2019

Date of
Hearing

15.02.2019

ORDER WITH SIGNATURE OF JUDGE

1. For orders on M. A. No. 272/2019.
2. For hearing of Bail Application.

Mr. Ahmed Bux Abro, advocate for the applicant.

Mr. Sharafuddin Kanhar, APG

In compliance of directions of the Court, Counsel for the applicant files statement dated 15.2.2019 along with certified copy of FIR as well as challan. Same are taken on record.

Through instant bail application, applicant Izhar Ali Leghari seeks post arrest bail in Crime No.98/2018, registered at Police Station Darri, Larkana, under Section 9(c), CNS Act, 1997. The case has been challaned by the police on 04.1.2019, which is now pending for trial before the Court of Special Judge CNS, Larkana vide Special Case No.240/2018 re-State v. Izhar Ali.

The crux of the prosecution case is that on 19.11.2018, a police party headed by ASI Mahmood Ali Tunio of P.S Darri was on patrolling, when they reached at Bakrani Road near Allah Wali Masjid, they received spy information that one Izhar Ali Leghari is selling contraband in the Leghari Street. Upon receipt of such information they proceeded towards the pointed place, when they reached there, they saw one person standing having black colour shopping bag in his hand, who on seeing the police party tried to slip away but was apprehended by the police. Due to non-availability of people of the area, the complainant by citing PC NazeerAhmed and PC Munawar Ali as mashirs secured shopping bag and he was enquired of his identity, who disclosed himself to be present applicant. Shopping bag was unfolded which was found



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containing charas and on weighing it became 2000 grams. Entire property was sealed and on his personal body search one denomination note of Rs.100/- was secured, which too was taken possession by the police. After preparing mashirnama of recovery the police brought the applicant and property at police station, where he was booked in this case on behalf of the State.

Learned Counsel submits that nothing was secured from the applicant and police in order to get shield from their superiors have foisted the contraband upon him. Moreover, he submits that place of information as well as place of recovery are thickly populated and thoroughfare places, where number of people ever used to remain available but the police in order to defeat the interest of applicant have willfully not associated any independent person from the locality. He submits that in case prosecution may succeed to prove its case after trial, even then the applicant will be convicted as per the sentencing policy as contained under Ghulam Murtaza's case reported in PLD 2009 Lah. 362. In support of his contentions, he has relied upon the case of *Khair Mohammad alias Khairo v. The State* (2012 Y L R 2298), *Asghar Ali v. The State* (2018 M L D 129) and unreported orders dated 20.1.2014 passed in Cr. Bail Appln. No.S-31 of 2014 and dated 09.09.2016 passed in Cr. Bail Appln. No.S-205/2016. He further submits that in identical cases the accused persons have been granted bail by this Court. He submits that case against the applicant requires further enquiry, hence he may be enlarged on bail.

On the other hand, learned APG opposes the bail application on the ground that contraband was found in possession of the applicant and application of Section 103, Cr.P.C is ousted in the act, therefore, it



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was not binding upon the police officer to associate any independent person from the locality. He further submits that case is fresh one and it will be appropriate for the applicant to proceed with the case instead to press his bail application.

I have heard learned Counsel for the applicant as well as learned APG for the State and have gone through the material made available before me on the record.

No doubt the police personnel are good witnesses as good any one from the public, but when a person was going to be charged for an offence which carries maximum punishment and entails sentence, then it was incumbent upon police to associate independent persons of the locality more particularly when the place of incident and place of information were thickly populated cum residential area and the offence, as is evident from the FIR, had occurred in the broad hours of the day. Admittedly the sentencing policy as contained under Ghulam Murtaza's case (supra) does not apply at bail stage; however, ultimate fate of the case will be followed by the dictum laid down in Ghulam Murtaza's case. All the P.Ws are police officials and, therefore, question of his absconding or tampering with the evidence does not arise. In my view, case against the applicant requires further enquiry within the meaning of Section 497(2), Cr.P.C. Accordingly, instant application is allowed. The applicant shall be released on bail on his furnishing solvent surety in the sum of Rs.200,000/- (Rupees Two Lac only) and P.R bond in the like amount to the satisfaction of trial Court.

Bail application stands disposed of along with listed application.

~~JUDGE~~