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ORDER-SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Crl. Bail Appln. No. S- 167 of 2017.

Date of hearing	Order with signature of Judge
01.11.2017.	

1. For orders on office objections.
2. For orders on M.A. No. 1495/2017.
3. For hearing of bail application.

Mr. Mazhar Ali Bhutto, Advocate for applicant.

Mrs. Rubina Dhamrah, ADPP.

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Through this application, applicant Abdul Wakeel alias Muzafar Jatoi seeks post-arrest bail in Crime No.07/2017, registered with P.S Naudero, under Section 9 (c) of the Control of Narcotic Substances Act, 1997. His similar request was declined by the trial Court, i.e. Special Judge (CNS), Larkana, vide impugned Order dated 20.02.2017.

Case of prosecution is that the applicant was found in possession of 2000 grams of charas by a police party headed by A.S.I Deedar Ali Zangejo of P.S Naudero, who was patrolling alongwith his subordinates and finding the applicant in suspicion condition apprehended him and recovered aforesaid contraband.

Learned counsel for applicant mainly contended that, the applicant/ accused is innocent and has falsely been implicated in this case by the police. He has further contended that the alleged contraband has falsely been foisted upon the applicant/ accused by the police with malafide intention just to cover up their highhandedness; as prior to registration of the F.I.R, the applicant was apprehended by the police in the morning of 20.01.2017 and was wrongfully detained at police, as such his maternal uncle filed an application under Section 491 Cr.P.C on 24.01.2017 before learned Sessions Judge, Larkana and on directions of learned Sessions Judge a raid was conducted at Police station, but before reaching of the raid commissioner the applicant was removed from



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lockup and ultimately on same date i.e. 24.01.017 at 1900 hours the instant FIR was registered by foisting charas upon applicant. He further submitted that two police officials are shown as mashirs, though the alleged incident is said to have taken place at very busy place, therefore, their evidence cannot be safely relied upon. Learned counsel further contended that there is also delay of 11 days in sending the sample for chemical analysis; as such no sanctity can be attached with report of chemical examiner. Per learned counsel, the applicant is under age of 18 years and is a student, as such his entire future would be ruined, if he is left in jail and refused bail. He has placed on record examination-slip of the applicant, which shows his date of birth and the class in which he is studying. Learned counsel lastly submitted that, the challan against the applicant has already been submitted; he is no more required for investigation and his further detention in jail would not serve any purpose, therefore, he has prayed for grant of bail to the applicant. In support of his arguments learned counsel has relied upon case of *Ayaz Ali v. The State* (PLD 2014 Sindh 282).

On the other hand learned ADPP, opposed the grant of bail to the applicant on the ground that a huge quantity of contraband has been recovered from possession of the applicant, and the offence falls within prohibitory clause of Section 497 Cr.P.C.

As per case of prosecution, allegedly the police recovered 2000 grams of charas from possession of the applicant when he was on the way/ road, but no any independent person has been cited as witness or mashir in the case. No doubt, the evidence of the police officials is as good, as other witnesses, but when the whole case rests upon sole evidence of police officials, their evidence requires deep scrutiny at trial. The alleged recovered charas was sent for chemical analysis after about 11 days; as such sanctity in respect of its report would be questionable. As per contents of application filed under Section 491 Cr.P.C by one Mukhtiar Ali, the applicant was arrested by police on 20.01.2017, as such

contention of learned counsel has some force, that on failure of raid the police managed to register instant case just to legalize their illegal act. Moreover, examination-slip of the applicant produced by learned counsel shown his date of birth as 20.03.2000, as such he is under the age of 18 years and being student, his future would be at stake, if he is left in jail and refused bail. The investigation of the case has been completed, and all the prosecution witnesses in this case are police officials, therefore, there is no apprehension of tampering with the evidence on the part of applicant. So far contention of learned ADPP that the offence comes within the ambit of prohibitory clause of Section 497 Cr.P.C; in this regard it is suffice to say that bail is not to be withheld as a punishment. There is no legal or moral compulsion to keep people in jail merely on the allegation that they have committed offences punishable with death or transportation, unless reasonable grounds appear to exist to disclose their involvement. The ultimate conviction and imprisonment of a guilty person can repair the wrong caused by a mistaken relief of bail granted to him, but no satisfactory reparation can be offered to an innocent man for his unjustified confinement in case of his acquittal in the long run.

Therefore, keeping in view the facts and circumstances of the case, prima facie, case against the present applicant requires further inquiry as contemplated under subsection (2) of Section 497 Cr.P.C. Accordingly, the instant application stands allowed and applicant is granted bail upon his furnishing solvent surety in the sum of Rs.100,000/- (One hundred thousand rupees) and P.R bond in the like amount to the satisfaction of trial Court.

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

JUDGE  
d/11/2017

Ansari/\*