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

Crl. Bail Apnl. No. S- 267 of 2017.

Date of hearing	Order with signature of Judge
09.10.2017.	

1. For orders on M.A. No. 3392/2017.
2. For hearing of bail application.

Mr. Habibullah G. Ghouri, Advocate for applicant.  
Mrs. Rubina Dhamrah, ADPP.

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Applicant/ accused Abdul Haleem Pathan seeks his release on bail in Crime No. 03/2017 of Excise P.S Jacobabad, for offence under Section 9 (b) of Control of Narcotic Substances Act, 1997. After his arrest, applicant preferred his bail application before concerned Court, but his request was turned down by order dated 16.06.2017. The case as reported, is pending before the Court of learned Special Judge for CNS, Jacobabad, vide Special Case No.34/2017, Re; State v. Abdul Haleem.

The crux of prosecution case is that police party headed by Inspector Gul Muhammad Bhutto of Excise Circle, Jacobabad, was busy in snap checking of suspected vehicles. During checking a wagon bearing No.VMA-531-Quetta, was signaled and the person seated on the front seat was alighted off. On enquiry, he disclosed his name to be present applicant. The police party conducted his body search and found a plastic bag from the fold of his trouser, which was containing heroin powder, which on weighing became one kilogram, out of which 500 gram was sealed for chemical analysis. Later on instant case was registered on behalf of the State.

Learned counsel for the applicant submits that there is violation of Section 103 Cr.P.C and that the passengers were available in the wagon and none from them was shown as witness or mashir to recovery proceedings. He further submits that, in-fact the applicant was not arrested from the Wagon as alleged by police, but he was taken away by

police from bus stop when he was going to his destination. He further submits that applicant failed to grease palm of police, therefore, they foisted contraband against him. Learned counsel lastly submitted that even after recording evidence, if prosecution succeeds to prove its case, the applicant may not be convicted for more than seven years. In support of his contentions, learned counsel placed his reliance on the case of **ATEEB UR REHMAN @ ATTI MOCHI VS. THE STATE (2016 SCMR 1424)**.

On the other hand, learned ADPP appeared for the State has opposed the application on the ground that huge quantity of contraband has been recovered from the applicant and at this juncture no case for bail is made out.

I have heard the learned counsel for the parties and have gone through the material available on record.

Allegedly, the contraband was recovered from possession of the applicant when he was travelling in a wagon, but the police have failed to make any of the passengers of the wagon to be witness of the proceedings, even driver or cleaner were not cited as witnesses in the case. Admittedly, applicability of Section 103 Cr.P.C is ousted from the Control of Narcotic Substances Act, 1997, however it was incumbent upon the police party to make necessary arrangement before going to charge a person with an offence which carries maximum punishment; particularly when they themselves have stated that the wagon was full of passengers. In the case of Ateeb ur Rehman @ Atti Mochi (*supra*), the Hon'ble Supreme Court has held as under:

"..... On Court query, the learned Additional Prosecutor General, after going through the recovery memo available on the file of police record, could not show that the recovered heroin was weighed alongwith the polythene beg or otherwise. If the recovered heroin was weighed alongwith the polythene bag, *prima facie*, the weight of the heroin without the polythene bag, if weighed, might have come to 1000 grams or less than that and in that eventuality, the case of the present petitioner would have fallen within the ambit of section 9 (b) of the Control of



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Narcotic Substances Act, 1997. In this backdrop, the case of the petitioner becomes one of further enquiry falling within the purview of section 497 (2) of the Code of Criminal Procedure."

In the instant case, identical is the position. In the circumstances and in view of the dictum laid down by Hon'ble Supreme Court of Pakistan in case of Ateeb ur Rehman @ Atti Mochi (*supra*), I am persuaded that case of applicant requires further enquiry in terms of subsection (2) to Section 497 Cr.P.C.

Accordingly, the applicant is admitted to 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.

JUDGE

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Ansari/\*