

ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. B.A. No.460 of 2016

Date

Order with signature of Judge

For hearing of bail application

10-6-2016

Mr. Asghar Ali Joiya, Advocate for Applicant
Mr. Zahoor Shah, APG

X-X-X-X-X

ABDUL MAALIK GADDI, J: Applicant Anwar Zaman son of Umardad, seeks post arrest bail in case under F.I.R No.19/2016 dated 19.1.2016 registered under Section 6/9 (b) of C.N.S. Act, 1997 at PS Mubina Town, Karachi.

Precise allegations against the applicant, as per F.I.R, are that on the day of occurrence, the police raiding party on spy information overpowered the applicant at about 0340 hours near Quetta Hotel, Quaid-e-Azam Colony, Block 4/A, Gulshan-e-Iqbal, Karachi and on his personal search 500 grams charas was recovered from his possession in presence of mashirs H.C. Muhammad Faisal and P.C. Javaid, thereafter, the accused was brought at Police Station, where the aforesaid F.I.R was registered against him.

After usual investigation, challan was submitted against the accused under the above referred Section.

Bail application was moved on behalf of the applicant/ accused before the Special Court-II(CNS)Karachi, the same was rejected vide Order dated 11.2.2016, thereafter, the applicant/ accused approached this Court.

Mr. Asghar Ali Joiya, learned counsel for the applicant/ accused has contended that the case against applicant/ accused is

false and has registered due to enmity. He further contended that alleged arrest and recovery was made in thickly populated area, but having alleged spy information, police officials did not associate any private witness at the time of arrest and/ or recovery from the present applicant; that the alleged recovery of charas was not sealed at the spot nor the same was weighed, but on presumption it was recorded in F.I.R that 500 grams charas was recovered, as such according to him under these circumstances false implication of the applicant/ accused in this case cannot be ruled out and the case of the applicant required further enquiry as challan against him has already been submitted before the trial Court.

Conversely, learned APG has vehemently opposed the grant of bail and has supported the order passed by the learned trial Court. Learned APG has argued that association of private witnesses was not called for. He further submitted that recovered charas has been sent for chemical examiner and the present applicant is involved in other criminal cases, therefore, applicant is not entitled for bail.

I have heard the learned counsel for the parties and also perused the available record.

It appears from the record that case has already been challaned against the applicant and the applicant is no more required for investigation. He is behind the bars since 19.1.2016, the case of the prosecution rest upon the evidence of the police officials, therefore, their evidence required thoroughly scrutinized at the time of trial. Since the whole case of the prosecution based upon the evidence of the police officials, therefore, there is no

apprehension of tampering with the prosecution evidence at the hands of applicant.

It appears from the record that 500 grams of charas was allegedly recovered from the possession of the accused and he was liable to be tried under Section 9(b) of Control of Narcotic Substances Act, 1997, which did not fall within the prohibition contained in Section 51 of Control of Narcotic Substances Act, 1997. Applicant is behind the bars for the last more than five months without any substantial progress in trial; that the applicant is previous non-convict. It is yet to be determined at the time of trial whether the applicant has committed the offence in a fashion as alleged by prosecution or otherwise, till then the case of the applicant required further probe.

Now coming to the contention of the learned APG that the applicant is also involved in other number of criminal cases in this respect, I am of the humble opinion that prior to conviction, it is presumed that every accused is innocent. Insofar as the case in hand is concerned, despite repeated queries by this Court, learned APG has failed to establish that applicant was ever convicted in any case registered against him, therefore, he cannot be refused bail mainly on the ground that certain other criminal cases have been registered against him. In this regard, I am supported with case of Shah Nawaz alias chullu vs. The State and another reported in 2013 P.Cr.L.J. 1782.

As observed above, the challan against accused has already been submitted in trial Court, where the accused is facing trial, the punishment of the offence under which the applicant/ accused has been booked is not more than seven years, thus it appears that the case against the applicant/ accused does not fall within the

prohibitory clause of Section 497 Cr.P.C. Under these circumstances, the applicant has made out a case for further enquiry as contemplated under sub-section (2) of Section 497 Cr.P.C., as such applicant is admitted to bail subject to his furnishing solvent surety in the sum of Rs.50,000 and P.R. Bond in the like amount to the satisfaction of the trial Court.

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

JUDGE

asim/pa