

**ORDER SHEET**

**THE HIGH COURT OF SINDH AT KARACHI**

Cr. Bail Application No.814 of 2016

-----  
Date                                      Order with Signature(s) of Judge(s)  
-----

For hearing of Bail Application.

M/s. Muhammad Asif & Naeem Qureshi Advocates for Applicant.

Mr. Habib Ahmed Special Prosecutor ANF alongwith Inspector Aftab Ahmed, ANF.

Date of hearing        :        20.06.2016

Date of Order         :        20.06.2016

**ORDER**

**Abdul Maalik Gaddi, J.** – Applicant Dawood Jatt son of Haji Dost Muhammad seeks post arrest bail in case under FIR No.40/2015 registered under Section 6/9, 14, 15 CNS Act, 1997, 3/4 PEHO, 1979 at police station ANF Clifton, Karachi.

2. Case of the prosecution in nutshell is that on 20.10.2015, upon receiving spy information, Inspector Sheeraz Siddiqui, P.S. ANF Clifton, Karachi, proceeded at pointed place alongwith his subordinate staff and stopped the suspected vehicle, conducted search and seized contraband charas, wrapped in plastic bag, beneath front seat of vehicle, which was weighed and found 1.200 Kgs; From search of the said vehicle cartoons containing 12/12 total 132 bags and 1584 bottles of wine lying at the rear side of the vehicle were recovered; the driver Muhammad Alam son of Abdul Ghafoor was arrested and recovery memo was prepared at the spot and subsequently the FIR was lodged at the police station. Contents of charge sheet submitted under Section 173 Cr.P.C.

transpire that the applicants are involved on sole statement of apprehended accused, who disclosed names of applicants during interrogation.

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

4. Bail application was moved on behalf of applicant/accused before the Court of Special Judge Control of Narcotics Substance, Thatta, the same was rejected vide order dated 14.03.2016, thereafter, the applicant/accused approached this Court.

5. Mr. Muhammad Asif, learned counsel for applicant/accused has contended that the case against the applicant/accused is false and has been registered due to enmity; that admittedly as per contents of FIR, neither applicant was present at the scene of the offence nor any narcotics substance was recovered from his possession, thus, the application or otherwise of Section 9(c) of Control of Narcotics Substance Act, shall be determined by the trial Court after recording of evidence but trial Court without considering this fact, rejected the bail plea of the applicant/accused in a hasty manner without considering her judicial mind; that present applicant/accused has been arrested in this case on the statement of co-accused namely Muhammad Alam recorded under Section 161 Cr.P.C., which has no evidentiary value in the eyes of law; that co-accused persons namely Hassan Ali, Abdul Aziz and Muhammad have been granted bail by this Court vide order dated 03.06.2016 and the case of the present applicant/accused is on same facts and grounds, therefore,

according to him, present applicant/accused is also entitled for same relief.

6. Mr. Habib Ahmed, learned Special Prosecutor ANF though opposed this bail application but has not been able to controvert the above stated position of facts and law.

7. Perusal of case papers shows that there is no evidence available on record against the applicant/accused except the statement of co-accused namely Muhammad Alam recorded under Section 161 Cr.P.C., which has no evidentiary value in the eyes of law. It is an admitted position that confessional statement of co-accused namely Muhammad Alam has not been recorded. It is also an admitted fact that applicant/accused has not been apprehended by the police at the spot and no contraband items have been recovered from his possession and there is no evidence collected by the prosecution showing that present applicant/accused in any manner is connected in the commission of alleged offence. Co-accused persons namely Hassan Ali, Abdul Aziz and Muhammad have been granted bail by this Court vide order dated 03.06.2016 and the case of the present applicant/accused is on same facts and grounds. Therefore, he is also entitled for same treatment.

8. Rule of consistency is always taken into consideration by the Courts since long because a person cannot be denied for the grant of bail whose case is at par of an accused who had already been released on bail.

9. The Courts have to give equal treatment to the accused persons having one and the same role in the same case. Reliance

upon the cases of Muhammad Fazal alias Bodi v. The State (1979 SCMR 9), Khadim Hussain v. The State (1983 SCMR 124), Muhammad Daud and another v. The State and another (2008 SCMR 173) and Manzoor Ahmad and others v. The State (PLJ 1999 Cr.C. (Lahore) 570).

10. As the case of the applicant/accused is at par with that his co-accused persons namely Hassan Ali, Abdul Aziz and Muhammad, who have already been allowed bail by this Court, therefore, following the rule of consistency, the applicant/accused is also entitled to the bail. Apparently, the case against the applicant/accused under the circumstances is one of further inquiry.

11. Resultantly, this bail application is allowed and the applicant/accused is admitted to bail subject to his furnishing solvent surety in the sum of Rs.100,000/- and P.R. bond in the like amount to the satisfaction of the Nazir of this Court.

12. This bail application was heard and allowed by me today in open Court in earlier part of the day and these are the reasons for allowing the same.

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

JUDGE

*Faizan/*