

ORDER SHEET
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.**

Cr.Bail.Appl.No.S- 768 of 2016

DATE	ORDER WITH SIGNATURE OF JUDGE
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07.11.2016.

Mr. Dilbar Khan Leghari, Advocate for applicant.
Mr. Shahzado Saleem Nahiyoon, A.P.G. for the State.

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Through instant bail application, applicant Abdul Haleem seeks post arrest bail in Crime No.36/2016 registered at Police Station Sindhri, u/s 9 (c) of C.N.S. Act, 1997.

2. The brief facts for disposal of this bail application are that police party of CIA Centre, Mirpurkhas headed by ASI Sobho Khan during course of patrolling when reached at Bhagio Water Course, noticed the availability of two persons with plastic sacks. One of them made his escape good leaving behind his sack who was identified to be Muhammad Hakim; the sack which he left behind was found containing 30 kilograms of "Poast/Dodi" (Poppy Straw) while the other (present applicant) was apprehended, he was identified to be Abdul Aleem. The sack, which he was having, was found containing 30 kilograms of "Poast/Dodi" (Poppy Straw), 150 kilograms of "Poast/Dodi" (Poppy Straw) was separated for chemical examination from each recovery, a mashirnama of arrest and recovery was prepared and then the present applicant case was registered.

3. It is contended by learned counsel for the applicant that he being innocent has been involved in this case falsely; there is no independent witness to the incident; offence is not falling within the prohibitory clause of Section 497 Cr.P.C, the investigation is conducted by an officer below the rank of Sub-Inspector which is not permissible under the law as such according to him the present applicant is entitled to be admitted to bail. In support of his contentions, he has placed reliance on the cases reported as 2002 P.Cr.L.J 677, 2006 MLD 154 and 2006 YLR 1100.

4. In rebuttal, it is contended by learned A.P.G. that the present applicant is neither innocent nor involved in this case falsely; the offence which he has

committed is punishable u/s 9 of the CNS Act, 1997 as such he is not entitled to bail. He has placed reliance on the case reported as PLD 2005 (Lahore) 440.

5. I have considered the arguments and perused the record.

6. The name of the present applicant is appearing in the FIR with specific allegation that on arrest from him was found sack, it was containing 30 kilograms of "Poast/Dodi" (Poppy Straw) which constitutes an offence punishable u/s 9 (c) of CNS Act, and is entailing the death penalty. In that situation, it would be premature to say that the present applicant being innocent has been falsely involved in this case by the police by making foistation which *even* otherwise is pure domain and function of the trial Court after evaluating the evidence. It is true that there is no independent witness to the incident which alone cannot be a ground for insisting bail particularly when there could be no denial to the fact that police officials are as good witnesses as others *may be* hence this plea alone is not sufficient for grant of bail particularly without establishing *malafide* or *enmity* on part of the police. The complainant of present case no doubt is ASI of the Police but there could be no denial to the fact that the investigation of the present case is being conducted by Sub-Inspector of the police, which is permissible under the law and even otherwise such is a *mere* irregularity as was held in the case of The State v. Abdali Shah (2009 SCMR 291) that:

'8. ...In this regard, the reference can be made to the case of State through Advocate-General v. Bashir (supra), wherein it was held that investigation by an officer not authorized to do so was merely an irregularity which is curable under section 537 Cr.P.C.

Therefore, this plea is also of no help for the applicant / accused to claim concession of bail in a case involving capital punishment. Besides, offences punishable under C.N.S Act of 1997 are by its nature heinous and considered to be the offences against the society at large and it is for this reason that the statute itself has provided a note of caution under section 51 of C.N.S Act of 1997 before enlarging an accused on bail in the ordinary course which fact also *normally* disentitles an accused for concession of bail particularly in those matters which by Act are of capital punishment. Reference can well be made to the case of Socha Gul v State 2015 SCMR 1077.

7. The case law which is relied upon by learned counsel for the applicant is on distinguishable facts and circumstances. In case **Gharibullah**, the main reason for admitting the accused to bail was that; the offence for which he was charged was entailing punishment of five years maximum. In the instant case, the punishment for the offence with which the present applicant/accused is going to be charged would entail death penalty, as it is falling U/s 9(c) of the CNS Act. In case of **Ibrahim**, the accused was admitted to bail mainly for the reason that; the contraband substance recovered from the accused was only two kilograms. In the instant case, the contraband substance recovered from the present applicant/accused is 30 kilograms and 30 kilograms more from his co-accused total 60 kilograms. In case of **Akram**, the main reason for admitting the accused to bail was that; at the time of recovery, he was not found available at his house. In the instant case, the very recovery is affected from the present applicant/accused in person when he was found available at the place of incident.

8. In view of the facts and discussion made above, it could be concluded safely that; the present applicant/accused is not entitled to grant of bail consequently, the instant application is dismissed.

JUDGE

Tufail