

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**  
Cr. Bail Application No.S-871 of 2016

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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For hearing.

28.11.2016.

Mr. Muhammad Hassan Chandio, Advocate for applicant.  
Syed Meeral Shah Bukhari, D.P.G Sindh.

**ORDER**

**MUHAMMAD FAISAL KAMAL ALAM- J:-** This is Criminal Bail Application, under Section 497 Cr.P.C filed by the applicant/accused, praying that the applicant/accused Mst. Nazeeran W/o Hakim Ali may be admitted to Bail in Crime No.93 of 2016, registered at Police Station Daulatpur, under Section 9(c) of Control of Narcotics Substance Act, 1997.

2. The relevant facts for deciding the present bail application are that the complainant SIP Syed Own Ali Shah lodged a FIR, stating therein that on 19.09.2016 at 1830 he being Duty Officer was present alongwith other police officials at the Police Station and on spy information that a lady was present at the road side alongwith Charas and waiting for transport near Raja CNG Stop, Daulatpur, proceeded to the place of incident and saw the present applicant with a black shopper in her hand, who seeing the police mobile tried to run-away but she was encircled and captured alongwith such shopper from which four large pieces of Charas were secured weighing 2000 grams, hence the present FIR was lodged against her.

3. The learned Counsel for the applicant/accused states that the applicant/accused was arrested on 19.09.2016 and since then she has been confined in jail. He further states that the applicant is a simple house-wife and she has been falsely implicated in the instant crime by the police party on account of enmity between her Lakho caste and Mashakh community as a minor boy of an influential landlord of Mashakh community was kidnapped. It is further stated that police have even taken away the Tractor and other articles of the applicant. He has relied upon the number of judgments in order to advance his case, that where the prosecution has to produce further material and especially the report of chemical analyst in order to confirm that the case property, which has been recovered actually falls within the ambit of Section 9(c) of Control of Narcotics Substance Act, 1997. In one of the cited cases *2009 P.Cr.L.J Karachi Page-702*, this Court has also taken into account the fact that the lady accused in that case had suckling baby and it was held that in such a situation she should not be detained in prison and is entitled for concession of bail.

4. On the other hand, the learned Deputy Prosecutor General has opposed the bail application on the ground that she was arrested alongwith 02 Kilograms of Charas, which was recovered from her possession. However, when queried, he confirms that the chemical examiner report is yet to be received from the concerned department in order to confirm about the material recovered/confiscated from the applicant/accused.

5. I have heard the learned Counsel for the applicant/accused as well as D.P.G for the State. It is an admitted position, that the present

applicant/accused has four small children, who are today present in Court alongwith their grandmother. The applicant was arrested from a densely populated area and yet no independent witness/private mashir was associated with recovery of the alleged Charas. It is also an undeniable fact as also mentioned in the present application that the applicant/accused has no previous criminal record and she being in jail further indicates that she is not required for any further investigation. More than two and half months have been passed and it would be humiliating for a lady applicant/accused to be behind the bars, particularly when the prosecution has yet to prove its case beyond reasonable doubt. In this regard a recent reported judgment of this Court is also relevant; *SBLR 2016 Sindh 29*, ratio whereof is applicable to the present case and in the cited decision, *inter-alia*, 2500 Grams of Charas was recovered from the applicant/accused, who was granted bail. It would be advantageous to reproduce the relevant portion of the above decision here-in-under:-

“After careful consideration of contentions of learned Counsel for the parties and meticulous examination of available record, admittedly alleged contraband narcotics is charas weighing about 2500 grams. No private witnesses have been associated though recovery place is thickly populated area thus this aspect requires further probe. The alleged recovery effected from applicant is 2500 grams of contraband narcotics substance which is claimed by prosecution to be **charas** and dictum laid down in the case of *GHULAM MURTAZA* (supra), provides a policy regarding quantum of sentence, and it varies according to the nature of contraband narcotics substance. Such judgment is endorsed by the Honourable apex Court in the case of *Ameer Zeb v. State* (PLD 2012

SC 380) and another case of Fareedullah v. State (2013 SCMR 302). The case in hand, if considered in view of such framed policy, the maximum punishment in instant case may, at the most, come as 05 years and 06 months. The position, being so, makes it clear that instant case does not fall within the prohibitory clause of sub-section (1) of Section 497, Cr.P.C. Moreover, prosecution has not claimed that the applicant is previously involved in same nature of the cases. The applicant/accused has been in continuous custody since last five months and is no more required for any purpose of investigation nor the prosecution has claimed any exceptional circumstance (s) which could justify keeping the applicant/accused behind the bars for an indefinite period.”

6. In view of the dicta laid down by this Court as referred to above and also keeping in view the facts and circumstances of the present case it justifies that the applicant/accused should be admitted to bail, therefore, the application under Section 497 Cr.P.C is allowed and the applicant/accused Mst.Nazeeran wife of Hakim Ali is admitted to post-arrest bail, subject to furnishing a solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousand only) and P.R bond in the like amount to the satisfaction of the learned Trial Court. However, it is clarified that none of the observations made here-in-above shall, in any way, influence the trial of the applicant/accused.

The Bail application stands disposed of.

JUDGE