

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

Cr. B.A. No. S- 1030 of 2017

DATED	ORDER WITH SIGNATURE OF JUDGE
07.02.2018	

For hearing

Mr. Bhagwandas Bheel, advocate for applicant
Mr. Shahid Ahmed Shaikh, DPG

OMAR SIAL, J.- Applicant Mst. Zainab @ Jumna has sought post-arrest bail in Crime No. 92 of 2017 registered under Section 9(c) of the Control of Narcotic Substances Act, 1997, at police station B-Section Latifabad, Hyderabad. Earlier, her post -arrest bail application was turned down by the learned IIIrd Additional Sessions Judge/ Special Judge for CNS, Hyderabad vide order dated 16.11.2016.

2. Brief facts of the prosecution case as stated by the complainant SIP Mubarak Ali in the aforementioned FIR are that on 13-09-2017 he along with his subordinate staff was on patrol duty when they received spy information that the accused lady in Crime No. 07 of 2017 is selling charas in Oad colony Unit No.6 Latifabad. They proceeded towards the pointed place, identified her as Mst. Zainab alias Juman (applicant), apprehended her and recovered 2040 grams. The police sealed the charas on the spot and thereafter brought her and the recovered property to the police station and registered the above FIR.

3. I have heard learned counsel for the Applicant as well as the learned DPG and have examined the available record with their able assistance. My observations are as follows:

- i. The learned counsel has argued that section 103 Cr.P.C, was not complied with; that the Applicant is a woman; there is a 2 day delay in sending the narcotics to the FSL; the complainant and the investigating officer of the case is the same; that the narcotics has been foisted upon her by the police due to enmity.
- ii. Section 25 of the Control of Narcotic Substances Act, 1997 excludes the applicability of section 103 Cr.P.C in cases falling under that law. Reference may be made to **Abdul Rasheed v. The State (2009 SCMR 306)** and **Tariq Mehmood v. The State (PLD 2009 SC 39)**.

- iii. As regards the learned counsel's argument that concession should be given to the Applicant as she is a woman, I am cognisant of the judgment of the Hon'ble Supreme Court in **Surraya Bibi v. The State (2008 SCMR 825)** where it was observed:

"We may point out here that in the cases pertaining to offence of narcotics, it has been seen that the drug peddlers, to achieve their nefarious objects, have adopted obnoxious device by engaging womenfolk and the children and through them crimes is being committed and ultimately mercy is sought against such accused on humanitarian grounds, etc. Therefore, to curb such menace, Courts are required to award adequate punishment instead of showing sympathy on the ground that accused is woman or a child, otherwise, the actual accused involved in such heinous crime, which is against the society, would be encouraged and carriers would also be freely available to promote the crime with the hope that after spending small period in the prison, they would be set at liberty despite of committing heinous crime of drug trafficking."

- iv. In the absence of any claims of malafide or prejudice, there is no bar on the complainant and the investigating officer being the same police officer. Reference may be made to Zafar vs The State (2008 SCMR 1254)
- v. The learned counsel's assertion that the police foisted the narcotics on the Applicant is unsubstantiated at this time and appears to be a blanket statement not backed by any substantial reasoning. Prima facie it seems odd that the police would foist the narcotics on a woman for no reason.
- vi. Prima facie it appears that the Applicant was apprehended red handed with a sizeable quantity of charas. The entire property was sent for analysis and the report was in the positive.

4. In view of the above, with much respect, I am of the view that the learned counsel has been unable to make out a case for grant of bail. Accordingly, this bail application is dismissed.

JUDGE