

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

Cr. B.A. No. S- 1120 of 2017

---

<b>DATED</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
--------------	--------------------------------------

---

07.02.2018

For hearing

Mr. Karim Bux Rind, advocate for applicant

Mr. Shahid Ahmed Shaikh, DPG

**OMAR SIAL, J.**-Applicant Atta Muhammad has sought post-arrest bail in Crime No. 225 of 2017 registered under Section 9(c) of the Control of Narcotic Substances Act, 1997, at police station A-Section Nawabshah. Earlier, his post - arrest bail application was turned down by the learned Special Judge, Shaheed Benazirabad vide order dated 29.08.2017.

2. Brief facts of the prosecution case as stated by the complainant SIP Manzoor Hussain Solangi in the aforementioned FIR are that on 19-07-2017 he along with his subordinate staff was on patrol duty, they received spy information that applicant is selling charas near Salt Factory at Bypass Nawabshah. They proceeded towards the pointed place found one person with black colour plastic bag who on seeing the police party tried to run but was apprehended. On his search, 3000 grams of charas was found in the bag he carried. The police sealed the charas on the spot and thereafter brought him 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 learned DPG and have examined the available record with their able assistance. My observations are as follows:

- i. The learned counsel for the Applicant has argued that the Applicant is innocent and has been involved falsely in this case due to a personal enmity; that there is a delay of 14 days in sending the charas to the FSL for analysis; that the Applicant was in the Sessions Court of District Shaheed Benazirabad on 19-7-2017 when he is said to have been arrested; that in accordance with the Ghulam Murtaza case (PLD 2012 SC 380) the Applicant can be sentenced to only 5 years and 6 months for the quantity of narcotics she carried as such her case falls within the non-prohibitory clause of section 497 Cr.P.C. Lastly he argued that section 103 Cr.P.C.

was not complied with. I will address each argument of the learned counsel.

- ii. As regards the issue of enmity is concerned the learned counsel has submitted that one girl named Hawa had married a cousin of the Applicant named Mohammad Siddique on her own free will and hence her parents, with the assistance of the local police, had foisted this case upon the Applicant. I am not impressed with this argument as if there was anybody upon whom the narcotics would have been foisted it should have been Mohammad Siddique who the girl married rather than the Applicant. Prima facie it appears to be a far-fetched allegation.
- iii. The reasons and impact, if any, on the prosecution case of the delay in sending the property to the FSL for analysis will have to be determined by the trial court after evidence is recorded. Reference may be made to Shah Muhammad vs The State (2012 SCMR 1276)
- iv. The plea of alibi is also of not much use to the Applicant in this tentative assessment of the case as even if he was in the courts in the morning, there appears to be no reason why he could not be arrested at 1815 hours in the evening, It is not the Applicant's case that he was in court at the time he is said to have been arrested.
- v. As regards the counsel's argument on non-compliance of section 103 Cr.P.C., it may be stated that section 25 of the CNS Act, 1997 excludes the applicability of section 103 Cr.P.C. in cases falling within the ambit of the said Act. Abdul Rasheed v. The State (2009 SCMR 306) and Tariq Mehmood v. The State (PLD 2009 SC 39).
- vi. As regards the learned counsel's argument that in accordance with the guidelines given in the Ghulam Murtaza case (supra), the Applicant can only be sentenced to 5 years and 6 months imprisonment, with much respect, the same does not find favour with me in view of the observations of the Hon'ble Supreme Court in Socha Gul vs The State (2015 SCMR 1077) and NAdeem Ashraf vs The State (2013 SCMR 1538).
- vii. 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