

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

Cr. B.A. No. S- 528 of 2017

DATED **ORDER WITH SIGNATURE OF JUDGE**

23.01.2018

For orders on office objection
For hearing

Mr. Bhagwandas Bheel, advocate for applicant
Mr. Shahzado Saleem Nahiyoon, D.P.G.

OMAR SIAL, J.- The Applicant has sought post-arrest bail in Crime No. 02 of 2017 registered under Section 9(c) of the Control of Narcotic Substances Act, 1997 at Excise police station, Mirpurkhas.

2. Brief facts of the case are that on 5-5-2017 an Excise & Taxation police party led by Inspector Nandlal was on patrol duty when he received information that a vehicle bearing registration number BJB-114 was transporting a huge quantity of narcotics (charas). The police party set up a picket to conduct snap checking for the suspected vehicle. The vehicle identified by the informer was seen and stopped. It was being driven by the Applicant. Upon searching the vehicle 20 kilograms of charas were discovered in 20 packets, each packet containing 2 slabs of charas. The entire property was sealed on the spot for onward submission to the Forensic Science Laboratory. The Applicant was arrested and a case registered against him.

3. I have heard learned counsel for the Applicant as well as the learned APG and have also examined the available record with their able assistance.

4. The learned counsel for the Applicant has primarily argued that a tracking report of the vehicle shows that the vehicle was at another place at the time the police claim it was stopped and searched. In addition he has argued that the Applicant has no criminal record; that no private witnesses were cited as mashirs of recovery; that the Applicant used the vehicle as a taxi so was not aware of what was placed at the rear seat of the vehicle; and that he has been falsely involved in this case as he had exchanged hot words with the police. The learned APG has vehemently opposed the grant of bail. My observations are as follows.

- i. Section 25 of the Control of Narcotic Substances Act, 1997 excludes the application of Section 103 Cr.P.C. hence the argument of the learned counsel regarding private persons not being cited as witnesses does not hold much weight specially at this preliminary stage.
- ii. The learned counsel's reliance on the tracking report to show that the vehicle was not at the spot where the police claim to have stopped it, with much respect, is in contradiction with his subsequent stance that as he used his vehicle as a taxi he was not aware what was lying on the rear seat. Be that as it may, the veracity of the tracking report will have to be determined after evidence is led in this regard during trial.
- iii. While the learned counsel during his verbal submissions did not argue that the narcotics were foisted upon the Applicant because he had earlier exchanged hot words with the police, yet, as it finds a place in his bail application, for the sake of propriety, I record my observation on this aspect. At this preliminary stage of bail, it appears unlikely that exchange of hot words would make the police foist such a large quantity of narcotics on a person who claims to be a taxi driver. Further, he has made no allegation of enmity or malafide on the police party that arrested the Applicant and made the seizure. In these circumstances and at this preliminary stage, mere allegation of an exchange of hot words in itself would not suffice for the grant of bail in a case where such huge quantity of narcotics is recovered.
- iv. The Applicant, at this stage, appears to have been apprehended red handed with a substantially large quantity of narcotics. The entire property was sealed and sent for chemical analysis. The FSL report is in the positive. The Applicant was driving the vehicle and there was no other person in the vehicle. Prima facie it appears that he was in knowledge of such a huge quantity of narcotics lying in the rear seat. The offence with which the Applicant is charged carries a potential capital sentence and falls within the prohibitory clause of section 497 Cr.P.C.

9. Above are the reason for my short order dated 22-1-2018 in terms of which the captioned bail application was dismissed.

JUDGE