

IN THE HIGH COURT OF SINDH COURT AT KARACHI

Criminal Bail Application No. 845 of 2017

Lutfullah..... APPLICANT

Versus

The State.....RESPONDENT

Mr. Muhammad Ijaz Tanoli Advocate for the Applicant.

Mr. Shafique Ahmed, Special Prosecutor for ANF.

Date of hearing : 21.7.2017

O R D E R

Adnan-ul-Karim Memon, J. – The Applicant namely Lutfullah is seeking post arrest bail in F.I.R No. D0107010/2017 registered at Police Station Anti-Narcotic Force, Clifton Karachi, for offences punishable under section 6 read with section 9 (c), Control of Narcotic Substances Act, 1997.

1. Brief facts of the prosecution case are that on 08.03.2017 at about 1600 hours Sub-Inspector Atif Sagheer of Police Station Anti-Narcotics Force, Clifton, Karachi lodged F.I.R against Applicant on the basis of information that Narcotic Smuggler Muhammad Khan Afridi's people namely Shakeel and Lutufullah have to deliver Narcotic drugs to special customer at Korangi Industrial area Bilawal round about near petrol pump at about 1300 hours, in vehicle bearing registration-AWZ-105. On receipt of said information a raiding party was formed, consisting of complainant, ASI Nawab Alam, HC Muhammad Rafz PC Saghram Das, PC Waqas Ahmed, PC Sher Bahadur, PC Sajid Ali, P.C Taufeeq-ul-

Hassan, SIP Fida Hussain and driver Muhammad Ahsan and other Anti-Narcotic Force staff, under the supervision of D/D Ahsan-ul-Haq Incharge Police Station Anti-Narcotics Force, Clifton Karachi, vide roznamcha Entry No.5. At 1215 hours, they reached at expected scene of crime and started conducting secret surveillance and at about 1315 hours they saw that from the southern sides a Core Car bearing registration no. AWZ-105 silver color stopped at the main road of Bilal colony and the two people found seated within it were apprehended. Police officer asked the people of the locality to act as witnesses but they refused, then PC Sajid Ali and PC Taufeeq were directed to act as Mashirs. The name of the apprehended people were inquired from them and the person occupying the driving seat identified himself as Muhammad Shakeel Son of Muhammad Ayoub, whereas the one sitting next to him identified himself as Lutfullah son of Mawaz Khan. However, they tried to deceive and mislead the police personnel and refrained from coming out clean but after being persistently questioned they conceded that narcotics were hidden beneath the front seat. Thereafter, the vehicle was searched and as per discloser of the accused three packets wrapped with yellow solution tape containing charas were recovered from beneath the front seat. The weight of each packet was measured to be 1 K.G amounting to a total of 3 Kg for three packets. The same was taken into custody and was sealed at the spot under mushirnama, and from all the packets 10/10 gram charas was taken out and sealed in a brown envelope for the purpose of chemical analysis. Police also recovered other material from the custody of accused. Accused and recovered properties were brought to the police station. Thereafter, the police lodged FIR under section 6 read with section 9-C of Control of Narcotic Substance Act, 1997 against Applicant and others.

2. Investigating Officer recorded statements of prosecution witnesses, interrogated Applicant; conducted chemical examination of recovered Narcotic Substance and obtained its report on 16.03.2017. Finally, Investigating Officer submitted Charge Sheet on 27.3.2017 before Special Court for Control of Narcotic Substances-II Karachi. The Applicant moved Bail Application No. Nil of 2017 in Special Case No. 246 of 2017, before the learned Trial Court which was dismissed vide Order dated 13.05.2017.

3. Mr. Muhammad Ijaz Tanoli learned counsel for the Applicant has contended that Applicant is innocent and has been falsely implicated in the present crime by complainant, in connivance with other police personal, due to enmity. Per learned counsel no offence has been committed by the Applicant as narrated by the police. Per learned counsel the recovery of 3 K.G. of Charas is foisted upon the applicant in a pre-plan conspiracy; that witnesses of the alleged recovery has not been cited from the locality, therefore, alleged recovery is doubtful; that there is violation of section 103 Cr.P.C; that co-accused Muhammad Shakeel has been granted bail vide order dated 13.05.2017 while bail was declined to the applicant by the learned trial court therefore rule of consistency is applicable in the case of applicant; that as per chemical report and ratio of its weight, the applicant cannot be accounted for the whole Narcotic Substance but for the material sent to the chemical examiner i.e. 30 grams, which does not fall with the prohibitory clause 497(1) Cr.P.C therefore, the applicant is entitled for the concession of bail; that the applicant belongs to very poor family and he has been involved by the complainant only for not fulfilling the illegal demand of the complainant; Per learned counsel Applicant has no previous criminal record and entire case requires further enquiry into the guilt of Applicant. He lastly prays for grant of bail to the Applicant. In support of

his contention, reliance has been placed upon the case of Abid Vs. The State (2016 SCMR 907), Fazil Khaliq Vs. The State & another (1996 SCMR 364), Fida Hussain Vs. The State & others (PLD 2002S.C. 46), Abdul Sattar & others Vs. The State (1982 SCMR 909), Wilayat & others Vs. The State (1984 SCMR 530) and Ghulam Murtaza vs. The State (PLD 2009 Lahore 362),

4. Mr. Shafique Ahmed, learned special prosecutor, Anti-Narcotic Force opposed grant of bail to the Applicant and argued that Applicant was arrested at the spot with 3 K.G of Charas. Per learned counsel the recovered material is Narcotics Substance, prohibited under Control of Narcotic Substances Act, 1997 which is recovered from beneath of the front seat occupied by the applicant which is exclusive possession of Applicant; that police is duty bound to register a case if any person possess, transports or sells and delivers on any terms as defined under Control of Narcotic Substances Act, 1997. He next argued that chemical examination Report dated 16.03.2017 of the recovered Narcotic Substance supports the prosecution case; that Applicant has been charged with offence under section 6 read with section 9 (c) of Control of Narcotic Substances Act, 1997 which is of serious nature and falls within the prohibitory clause of section 497 (1) Cr.P.C; that the prosecution has collected sufficient incriminating evidence against the Applicant and if the bail is granted the applicant will continue to commit similar criminal activities, causing harm to the public at large. He next contended that Prosecution case is fully supported by the statements of the witnesses therefore; Applicant is not entitled to the concession of bail; that the prosecution witnesses have no enmity with the Applicant which could suggest false implication of the Applicant; that the case of co-accused is

distinguishable from the case of applicant, therefore, he cannot rely upon the bail granted to co-accused Muhammad Shakeel, therefore rule of consistency is not applicable in the case of applicant.

5. I have heard learned counsel for the Applicant, learned special prosecutor for Anti-Narcotic Force, and perused the material available on record as well as case law cited at the Bar.

6. While deciding a bail application, only allegations made in the FIR, statements recorded under Section 161 Cr.P.C. nature and gravity of charge, other incriminating material against the accused, legal pleas raised by the accused and relevant law have to be considered.

7. Tentative assessment of record reflects that applicant is arrested red-handed with possession of 3 K.G of Charas (Narcotics Substances). The recovery of Charas was duly witnessed by the police officials who are as good witness as any other person and who had no ostensible reason to falsely implicate the Applicant in a case of present nature. Chemical Examination Report supports the prosecution case. Reverting to the arguments of non- performance of provisions of section 103 Cr.P.C. Section 25 of Control of Narcotic Substances Act, 1997 excludes applicability of section 103 Cr.P.C. thus, ratio of judgment in the case of Ghulam Murtaza (Supra) relied upon, is not relevant at bail stage. Case of the Applicant is hit by prohibition contained in Section 51 of the Control of Narcotic Substances Act, 1997. Therefore no case of further enquiry is made out. Reliance is safely made in the case of Socha Gul vs. The State (2015 SCMR 1077). Rule of consistency is not applicable in the present case as Applicant has failed to produce any material to suggest that he is falsely implicated in the alleged crime, merely saying that Applicant has been implicated by Anti-Narcotic Force due to non-fulfilling of their illegal demands is not sufficient to discard

the prosecution story as false, which is even otherwise a factual controversy and, at bail stage only tentative assessment of the record is to be made. Besides that the offence falls under section 9 (c) of Control of Narcotic Substance Act, 1997 which is punishable with life imprisonment.

8. The case law cited by the learned counsel for the Applicant is distinguishable from the facts and circumstances of the case in hand.

9. In view of the above facts and circumstances the Applicant has not made out a case for grant of bail at this stage therefore, the instant bail application is dismissed.

10. The findings mentioned above are tentative in nature which shall not prejudice the case of either party at the trial stage. However, the learned Trial Court is directed to record evidence of the material witnesses within a period of three months where after the Applicant will be at liberty to move fresh bail application before the learned Trial Court on fresh ground, if any.

11. That above are the reasons of short order dated 21.7.2017.

JUDGE