

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI,
Cr.Bail.Appl.No.445 of 2018.

DATE ORDER WITH SIGNATURE OF JUDGE

1. For orders on M.A. No. 389 of 2018.
2. For hearing of bail application.

16.04.2018.

Mr. Mehar Qadir Khan, Advocate for Applicant.
Mr. Abrar Ali Khichi, Deputy P.G. Sindh.

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Through instant bail application, applicant Yousuf Khan son of Muhammad Nawaz, seeks post arrest bail in Crime No.02 of 2018 registered at Police Station Pak Colony, Karachi, for offence punishable u/s 6/9 (c), of C.N.S. Act, 1997.

2. Precisely, relevant facts of the case are that on 03.01.2018 police party of P.S. Pak Colony, headed by HC Munawar Hussain, was busy in patrolling of the area in official mobile. It was about 1400 hours when the police party reached at Mianwali Colony, near Meva Shah Graveyard, they saw a person, riding on a motorcycle bearing Registration No.KKN-7677, in suspicious condition. The police signaled him to stop for checking purposes, who on inquiry disclosed his name as Yousuf son of Anwar Khan. During his search police recovered a plastic shopper from the fold of his shalwar containing two pieces of charas, which was weighed and found to be 2040 grams and cash amount of Rs.200/-. He arrested the accused and sealed the recovered property on the spot in presence of mashirs and then brought the accused and the recovered property at police station where FIR was lodged on behalf of State. After usual investigation he was sent up for trial.

3. Learned counsel for the applicant *inter alia* contends that recovery affected from the applicant is 2040 grams charas; chemical report is delayed; applicant is not previously involved in same nature of the cases; as to registration of murder case against the applicant, the same was

disposed of under 'C' class; no independent person has been cited as witness; investigation is completed; all the prosecution witnesses are police officials, hence there is no question of tampering with the prosecution evidence. He lastly contended that applicant is behind the bar since last more than three months. He has relied upon case law reported as PLD 2009 Lahore 362 and PLD 2012 Supreme Court 380.

4. Learned D.P.G. while opposing this application, has contended that this is a crime against society, hence, he is not entitled for concession of bail.

5. After careful consideration of contentions of learned counsel for the parties and meticulous examination of available record, alleged contraband narcotics is 2040 grams charas. No private witness has been associated despite the place of incident was a busy place, hence the complainant party *least* could have made an attempt to associate *private* mashirs from the place of incident; which makes a room for further probe. Besides, applicant has been in continuous custody since last more than three months and is no more required for any purpose of investigation nor the prosecution has claimed any exceptional circumstance which could justify keeping the applicant behind the bars for an indefinite period. As to the criminal history of the applicant is concerned, the learned counsel has drawn the attention of this Court that the applicant was previously involved in a murder case, but the same was recommended for disposed under 'C' class and such report has been approved by the Court of competent jurisdiction. All the prosecution witnesses are police officials hence there is no question of tampering with the evidence. Therefore, keeping *peculiar* facts of instant case; continuous detention of more than three months as well *minimum* punishment, which *normally* may be considered while dealing with bail plea, I am of the view that scale tilts in favour of the applicant for grant of bail as no *useful* purpose is likely to be served with further detention of applicant pending determination of his guilt.

06. Keeping in view the above given circumstances, *prima facie*, applicant has succeeded to bring his case within the purview of subsection (2) of section 497 Cr.P.C, for this reason, he is admitted to post arrest bail subject to his furnishing 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 trial Court.

JUDGE

Sajid