

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**  
Cr. Bail Appln. No.S-631 of 2017

<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
<i>FOR HEARING.</i>	

31.08.2017.

*Mr. Bilawal Bajeer, Advocate for applicant.*  
*Mr. Shahid Ahmed Shaikh, D.P.G.*

**ORDER**

**ABDUL MALIK GADDI, J:-** Having remained un-successful in obtaining his release on bail from the Trial Court in Crime No.46 of 2017 registered at P.S Mithi for offence under Section 9(c) of Control of Narcotic Substances Act, 1997. Now the applicant/accused Muhammad Qasim S/o Muhammad Mehar is seeking his release on bail through the instant bail application.

2. The facts of the case need not to be reiterated here as the same have been stated in the memo of this bail application as well as in the bail rejection order of the Trial Court.

3. Learned Counsel for the applicant/accused has contended that the applicant/accused is innocent and has been implicated in the case by the police with malafide intention and bad motives; that neither the contraband i.e. Charas has been effected from the possession of the applicant nor it was possessed by the applicant but actually the recovered contraband has been foisted upon him; that the place of incidence, wherefrom the applicant has been arrested by the police officials with recovered substance, is Gadi Bhit, which is populated area of the locality and that there was a public hotel as well as guest house

near Gadi Bhit but no private person has been associated as mashir to witness the contraband recovered from the accused except the police mashirs, who are interested and subordinates to the complainant, and that such type of recovery from the accused cannot be believed as it creates violation of Section 103 Cr.P.C. Lastly, it is prayed that the applicant/accused may be admitted on bail for which he is ready to furnish surety.

4. Learned Deputy Prosecutor General opposed this bail application on the ground that this is the crime against the society, however, he concedes that there is no criminal history of the applicant/accused in the past.

5. After careful consideration of the contentions of the learned Counsel for the parties and meticulous examination of the available record, admittedly the alleged contraband narcotics is Charas weighing about 1150 grams. No private witnesses have been associated though recovery place is thickly populated area, thus this aspect of the case requires further probe. The alleged recovery effected from the applicant is 1150 grams of contraband narcotics substance, which is claimed by the prosecution to be Charas and dictum laid down in the case of GHULAM MURTAZA, provides a policy regarding quantum of sentence, and it varies according to the nature of contraband narcotics substance. Such judgment is endorsed by the Honourable Apex Court in the case of AMEER ZEB V. THE STATE (PLD 2012 SC 380) and another case of FAREEDULLAH V. THE STATE (2013 SCMR 302). The case in hand, if considered in view of such framed policy, the maximum punishment in the instant case may, at the most, come as 05 years and 06 months. The position, being so, makes it clear that instant

case does not fall within the prohibitory clause of sub-section (1) of Section 497 Cr.P.C. Moreover, prosecution has not claimed that the applicant/accused is previously involved in same nature of the cases. The applicant/accused is in continuous custody since his arrest and is no more required for any purpose of investigation nor the prosecution has claimed any exception circumstance which could justify keeping the applicant/accused behind the bars for an indefinite period.

6. Keeping in view the above given circumstances, prima facie, the applicant/accused has succeeded to bring his case within the purview of Sub-Section 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) and P.R Bond in the like amount to the satisfaction of the Trial Court.

7. Needless to mention that the observations made in this bail order are tentative in nature and shall not in any way affect the merits of the case at the trial.

Bail application stands disposed of.

JUDGE