

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

Cr. Bail Appln. No.S-640 of 2017

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

31.08.2017.

Mr. Bhagwandas Bheel, 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.49 of 2017 registered at P.S Mithi for offence under Section 9(c) of Control of Narcotic Substances Act, 1997. Now the applicant/accused *Tara Chand S/o Hari Ram* is seeking his release on bail through the instant bail application.

2. The allegations against the applicant/accused are that on 12.06.2017, the complainant SIP Herji alongwith his subordinate staff during patrolling at Naon Kot Mithi Road, apprehended the accused and from his possession, 1048 grams of Chars was recovered.

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. It is also contended that the place of arrest of the applicant/accused is a populated area but the Police has failed to associate any private witness as *mashir* to witness the recovery proceedings, which is clear violation of Section 103 of Cr.P.C. The learned Counsel also contended that the prosecution story is false, fabricated and highly unbelievable and is without any independent or corroborative piece of evidence, as such, the case of the applicant/accused is of further inquiry. He further submits that if the prosecution story is correct and true, then the case of the applicant is a of border line case between Section 9(b) and Section (c), therefore, the concession of bail may be extended to him. Learned Counsel also submits that the alleged recovery of Charas was made on

12.06.2017 and the sample of the recovered substance i.e Charas was sent to the Chemical Examiner on 19.06.2017 after the delay of 07 days for which no satisfactory explanation has been furnished by the prosecution, therefore, according to him false implication of the applicant/accused in this case cannot be ruled out. He lastly prayed that the applicant/accused is entitled to the grant of bail for which he is ready to furnish required surety. Learned Counsel in support of his arguments has relied upon the case reported as *MUHAMMAD SHARIEF V. THE STATE* (2017 YLR 1282).

4. Learned Deputy Prosecutor General though opposed the bail application but he is not able to controvert the above legal and factual position.

5. I have given careful consideration to the arguments of the learned Counsel for the applicant/accused and learned D.P.G as well as perused the record and the case law cited at Bar. As per story of prosecution, the applicant was caught red handed on 12.06.2017 in Mithi City and from his possession, 1048 grams of Charas were recovered in presence of the mashirs. It is pointed out that the area from which the applicant/accused was apprehended is a thickly populated area but the Police officials due to their malafide did not call any independent and respectable person of the locality to witness the recovery proceedings. It is settled law that a single circumstance if creates in the prosecution story, the benefit of which should be given to the applicant/accused but not the prosecution. It is further pointed out that the Charas was recovered from the possession of applicant/accused on 12.06.2017 but its sample was sent to the Chemical Examiner on 19.06.2017 with delay of 07 days, for which no plausible explanation has been furnished. In my tentative view, the case of the prosecution requires further inquiry, therefore, at this stage bail cannot be refused to the applicant/accused as yet the prosecution story has to be proved at the trial.

6. In view of the foregoing, I am satisfied that on the basis of facts and circumstances of the case, the applicant/accused has succeeded in making out a reasonable case for grant of bail. Accordingly, the applicant/accused is admitted on 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

Shahid