

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

Cr. Bail Application No.S-116 of 2017.

DATE	ORDER WITH SIGNATURE OF JUDGE
<u>06.10.2017.</u>	<p style="text-align: center;">For hearing.</p> <p style="text-align: center;">Mr. Taj Muhammad Keerio, Advocate for the applicant. Mr. Amjad Ali Sahito, Special Prosecutor ANF.</p> <p style="text-align: center;">===</p> <p><u><i>ABDUL MAALIK GADDI,J-</i></u> Applicant Subhan s/o Muhib Ali having been remained un-successful in obtaining his release on bail from the trial Court in Crime No. DO40404616 registered under section 6,9 (c) of CNS Act, 1997 at Police Station, Anti Narcotic Force, Hyderabad is now seeking his release on bail through instant bail application.</p> <p>2. Allegations against the accused/applicant are that on 27.12.2016 a police party of ANF Hyderabad headed by SHO/Inspector Nisar Ahmed on spy information and directions of high ups about the delivery of charas by accused to his customer at Breeze Fish Point Giddu Chowk, Hyderabad left ANF P.S. under entry No.05 at 0830 hours and at about 0900 hours reached said place where accused was pointed by the spy and a black colour shopping bag was secured from his possession. The complainant asked some passersby to become mashir but due to fear of narcotic paddlers they refused therefore, he deputed his constables Nasir Ali and Muhammad Ameen as mashirs and opened said black colour shopping bag which contained small and big pieces of charas. On weight through electronic scale the same become 2200 gram. The said charas were sealed in white cloth parcel. Cash of Rs.1500/- was also recovered from the pocket of shirt of accused. such mashirnama of arrest and recovery was prepared on the spot and thereafter accused and property was brought at ANF P.S where present F.I.R. was lodged by the complainant on behalf of the State.</p> <p>3. It is argued by the learned counsel for the applicant that he is innocent and has falsely been involved in this case due to political rivalry, besides</p>

according to him, despite of advance/spy information to ANF so also busiest place no private person was associated as mashir which makes the prosecution case to be of further inquiry. He further submitted that applicant/accused belongs to Muslim League Functional and victim of political enmity. He further submitted that no exact number of pieces was shown by the police and even it is not known that how much pieces were small and how much were big. He further submits that case against the applicant has been challaned and he is no more required for further investigation. He further submits that in this case complainant himself is I.O, who conducted the investigation of the instant F.I.R, therefore, how the applicant can believe upon the complainant about the fair investigation. In the circumstances, the case of applicant requires further inquiry, as there is no apprehension of tampering with the evidence or absconsion of the applicant/accused. In support of his contention, he has placed reliance on the cases of JAMALUDDIN alias ZUBAIR KHAN V. STATE [2012 SCMR 573], MUHAMMAD FAROOQ KHAN v. STATE [2007 P.Cr.L.J. 89], PIR BUX v. STATE [2007 MLD 1696], PERVEZ AHMED v. STATE [PLD 2008 Karachi-14] and ABDUL RASHEED v. STATE [PLD 2002 Karachi 453] and lastly he prayed for grant of bail.

4. Conversely, learned Special Prosecutor ANF has opposed this bail application on the ground that the name of the applicant/accused is appearing in the F.I.R, besides according to him, a huge quantity of charas was recovered from the applicant/accused; that the offence falls within the ambit of prohibitory clause of section 497, Cr.P.C. He further submitted that in this matter, 2200 gram of charas was recovered from the applicant/accused in presence of police mashirs, who have no inimical terms with the applicant. He further submitted that there is no bar that complainant who is acted as I.O. of the case and in this respect he has placed reliance on the case of DOLAT KHAN v. STATE [2016 SCMR 1447].

5. I have given my anxious thoughts to the contention raised at the bar and have gone through police papers so made available before me.

6. It is an admitted position that the case has been challaned and applicant/accused is no more required for further investigation. It appears

from the record that no private mashir has been associated despite of the fact that the place from where the applicant was arrested on spy information, which is populated area, for which, no satisfactory explanation has been given in this regard. It also appears that the case of prosecution rests upon the evidence of ANF officials witnesses, therefore, there is no question does arise for tampering their evidence at the hands of the applicant. Since the whole case of the prosecution based on the evidence of ANF police official, therefore, their evidence is required to be minutely scrutinized at the time of trial whether the offence as narrated in F.I.R. by the complainant, allegedly committed by the applicant in a fashion as alleged or otherwise. There is nothing on record to show that the applicant/accused is previous convict or has been arrested in a case of similar nature in past. It is argued by learned counsel for applicant that complainant who himself conducted the investigation, therefore, his evidence cannot be safely relied upon and according to him, false implication of the applicant/accused in this scenario cannot be ruled out. Learned Special Prosecutor ANF submits that evidence of police official is as good as of other witnesses and in this respect, he has placed reliance on the case of *DOLAT KHAN v. STATE* [2016 SCMR 1447].

7. As observed above, challan has already been submitted and this accused is no more required for further investigation. On Court query, it has been disclosed by learned counsel for applicant that the applicant is not previous convict or has been arrested in a case of similar nature in past. This fact has not been disputed by learned Special Prosecutor ANF. It is an admitted fact that complainant who himself conducted the investigation of the case. No doubt, complainant police official also acting as investigating officer, although the evidence of a complainant police official, who also becomes the Investigating Officer is admissible in evidence yet under the circumstances of the case and for the safe administration of justice, his evidence is also required to be thoroughly scrutinized by the trial Court till then the case of applicant requires further probe. The case law cited by learned Special Prosecutor ANF is on different facts from the case in hand.

8. What has been discussed above, I am of the opinion that the case of applicant has made out a case for bail. Accordingly, bail is granted to the

applicant subject to his furnishing a solvent surety in the sum of Rs.100,000/-(Rupees one lac) and PR bond in the like amount, to the satisfaction of trial Court.

9. Needless to mention here that observations made herein above, if any, are tentative in nature and shall not affect the merits of the case.

The bail application stands disposed of in the above terms.

JUDGE.

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