

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

Cr. Bail Application No.S-698 of 2017.

DATE	ORDER WITH SIGNATURE OF JUDGE
<u>29.09.2017.</u>	<p style="text-align: center;">For hearing.</p> <p style="text-align: center;">Mr. Irfan Ahmed Bughio, Advocate for the applicant. Mr. Irum Ahmed D.D.P.P. for the State.</p> <p style="text-align: center;">===</p> <p><u><i>ABDUL MAALIK GADDI,J-</i></u> Having remained unsuccessful in obtaining his release on bail from the trial Court in crime No.102 of 2017, registered under section 9 (C) of CNS Act, 1997 at P.S. Hali Road, Hyderabad, the applicant Shahzado s/o Allah Dito Jamali is now seeking his release on bail through instant bail application.</p> <p>2. Prosecution case as unfolded from the contents of F.I.R. lodged on behalf of the State by complainant SIP Rao Muhammad Nasir of P.S. Hali Road, Hyderabad on 12.8.2017 at 2130 hours are that on said date under entry No.29 at 1900 hours he alongwith staff namely HC Nasrullah, PC Zakria Masih and DPC Muhammad Rafique left police station for patrolling in the area in official vehicle No.SPD-202. After patrolling different places when they reached at Makrani Phatak complainant received spy information that two persons with intention to sell charas of narcotic paddler namely Aziz s/o Allah Warayo by caste Lashari r/o Marvi Town Qasimabad, Hyderabad are standing near Edhi Centre Ground Makrani Para. On this the police party reached the pointed place and found two persons having black colour shoppers in their hands, who seeing police coming towards their side tried to run away but were apprehended at 2000 hours. On query, one disclosed his name as Shahzado s/o Allah Ditto Jamali r/o Waqar Town Anwar Villas Qasimabad, (applicant/accused) and other as Azizullah s/o Karim Bux Jamali r/o Babarlo Khan Palari Goth, Bhitai Nagar, Hyderabad. Due to non-availability of private mashirs, HC Nasrullah and PC Zakria were deputed as mashirs and bodies of both culprits were searched. From the possession of accused Shahzado Jamlai, the black colour shopping bag was</p>

secured which on checking found contained five big patties of charas having writing in its middle with golden colour "GUMNAM" 2015, while corner of one piece was in broken condition. All the patties having small holes. On further search of accused Shahzado, five currency notes of Rs.100/-, total Rs.500/- were also secured from the front pocket of his shirt. During search of second accused Azizullah Jamali the black colour shopping bag was taken into custody and on checking it contained four big patties with writings as mentioned above in middle. From the pocket of his shirt four currency notes of Rs.100/- each and one currency note of Rs.50/-, total Rs.450/- were recovered. The recovered charas was weighed separately through electronic scale and the charas recovered from the possession of accused Shahzado Jamali become 2500 grams, while from the accused Azizullah 2000 grams. Both the accused on enquiry about the charas disclosed that the said charas belong to Azizullah s/o Allah Warayo by caste Lashari who has provided them for sale purpose. The recovered charas was sealed separately in white cloth bags for chemical examination. Thereafter the accused and properties were brought to PS where present F.I.R. was lodged on behalf of the State.

3. Learned counsel for applicant has argued that applicant is innocent and prosecution case is false. According to him, the present case is of a result of enmity with SIP Sohail Sarwar Jamali, SIP Asghar Hussain Jamali and ASI Altaf Jamali, who being relatives of the accused had bad eyes on the house of the applicant/accused, thereby using their official capacity got involved the applicant/accused at PS Hali Road, Hyderabad. He also argued that police had advance information but inspite of that failed to associate the private person as mashir. According to him, there is no criminal record of the applicant/accused and the applicant/accused is in custody and nothing was record from his possession. Per learned counsel, case has been challaned and the applicant/accused is behind the bar since his arrest and is no more required for further investigation. Per learned counsel, in this matter, co-accused Aziz s/o Allah Warayo has already been granted bail by the trial Court and the case of the applicant/accused is almost on same facts. Per learned counsel, in this matter, Complainant SIP Rao Muhammad Nasir, who himself conducted the investigation, therefore, according to him, false implication of the applicant/accused in this scenario cannot be ruled out, as

such, it is yet to be determined at the time of trial whether the offence as alleged in the F.I.R. by the complainant, allegedly committed by the applicant/accused in a fashion or otherwise. In view of above circumstances, learned counsel for applicant has prayed for grant of bail in favour of the applicant.

4. Conversely, learned D.D.P.P. for the State has opposed this bail application of the applicant/accused by submitting that a huge quantity of charas i.e. 2500 grams had been physically recovered from the applicant/accused, which cannot be foisted upon him. He further submits that provision of section 103, Cr.P.C. are not applicable to the cases falling under C.N.S. Act, 1997.

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

6. It is an admitted position that the case has been challaned and the applicant is no more required for investigation. The case of prosecution rests upon the evidence of police officials, 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 police official, therefore, their evidence is required to be minutely scrutinized at the time of trial whether the offence as alleged in F.I.R. by the complainant, allegedly committed by the applicant in a fashion as alleged or otherwise. 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 stated by the learned counsel for the applicant that this case is outcome of enmity as complainant and his subordinate staff, who are mashirs and I.O. of the case are the colleagues of SIP Suhail Sarwar Jamali, SIP Asghar Hussain Jamali and ASI Altaf Jamali who are near relatives of the present applicant/accused and they had evil eyes and want to usurp the property of the applicant. In this connection, learned counsel for the applicant stated at the bar that present applicant/accused has been involved in this case at the instance of his near relatives SIP Suhail Sarwar Jamali, SIP Asghar Hussain Jamali and ASI Altaf Jamali, as they had bad eyes on the house of the applicant and when applicant/accused refused to hand over or sell to the said police officials, they in collusion with the present complainant got registered the present case

against the applicant, therefore, according to him, this fact also requires evidence.

7. It is also an admitted fact that the complainant SIP Rao Muhammad Nasir is also acted in this case as investigating officer, although the evidence of the complainant, who himself conducted the investigation is also admissible in evidence yet for the safe administration of justice, he should have entrusted the investigation to some other police officer so that nobody raised a finger on the investigation, therefore, on this ground also it is yet to be determined by the trial Court whether the investigation carried out by the complainant, who himself acted as I.O. of the case, falsely involved the present applicant/accused in this case or otherwise. Learned D.D.P.P. though opposed the bail plea of the applicant, but did not controvert this aspect of the case satisfactorily.

8. In view of above, I have come to the conclusion that at this stage the applicant has made out a case for grant of bail. I, accordingly allow this bail application and applicant is admitted to bail, subject to his furnishing solvent surety in the sum of Rs.1,50,000/-[Rupees one lac and fifty thousand] and PR bond in the like amount, to the satisfaction of trial Court. Since in this case there is evidence of police officials consists of three witnesses, therefore, the trial Court is directed to decide the case as early as possible preferably within a period of two months after receipt of this order and no un-necessarily adjournments shall be granted to either side. Compliance report be submitted to this Court through Additional Registrar.

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

JUDGE.

g