

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,**  
**HYDERABAD.**  
Cr.Bail.Appln.No.S- 634 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing.

06.10.2017.

Mr. Mukhtiar Ali Rind, advocate for applicant.

Mr. Shahzado Saleem Nahiyoona D.P.G

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**ABDUL MAALIK GADDI, J-** Having remained unsuccessful in obtaining his release on bail from the trial court in Crime No.116 of 2017 registered under sections 9(c) of Control of Narcotic Substances Act, 1997 at Police Station B-Section Shaheed Benazirabad, now the applicant Baqar Ali is seeking his release on bail through instant bail application.

2. The allegations of prosecution against present accused as per FIR are that on 13.06.2017 in pursuance of spy information, received during patrolling by complainant SIP Khan Muhammad Jamali, the present accused was arrested from Railway platform-II of Shaheed Benazirabad. It is also alleged that during his personal search conducted in presence of police mashirs 2000 grams charas was recovered from his possession alongwith cash amount Rs.350/=. After observing formalities sealing the recovered charas and samples on spot, the accused was brought at P.S, where FIR was lodged.

3. Learned counsel for applicant/accused argued that the case against applicant is false and he has been implicated by the complainant with malafide intention; that it was day time incident took place at busy place but no private person is shown / associated as mashir of recovery; that the whole case of the prosecution rests upon the evidence of police officials who are subordinate to

complainant, therefore false implication of the applicant in this case cannot be ruled out; that the applicant is neither hardened nor disparate criminal or previous convict and the case has been challaned, hence no more required for investigation.

4. Learned D.P.G has opposed the bail application on the ground that a huge quantity of 2000 grams charas was recovered from the physical possession of the applicant and there is no any ill will alleged against the applicant to falsely involve him in present crime; that the public persons were not co-operating with police and since no person from public was seen, hence complainant made his subordinates as mashirs and as per section 25 of CNS Act police witnesses are good witnesses, therefore he prayed that this bail application may be dismissed.

5. I have given my anxious thought to the contentions raised at bar and have gone through the police papers so made available before me. The plain reading of FIR it reveals that police during patrolling reached at Jam Sahib road where they received spy information that one person was selling chars openly on Railway Plate Form, on such, police rushed there and at 0745 hours arrested the accused alongwith alleged charas. It is an admitted fact that the incident took place at thickly populated area in daylight time and complainant having advance information did not bother to take with him any independent person either from the place of information or from the place of incident, which creates highly doubt in the prosecution case and requires probe. Further, the incident took place on 13.6.2017 and since then applicant/accused is in jail, however the trial is yet to be concluded, apparently the same would take time and the witnesses have were police personal as such, prima facie, there is no possibility of tempering of the prosecution evidence at the hands of applicant. It is settled law that law is not to be stretched in favour of the prosecution and benefit of doubt arising out of the prosecution case is to be exercised in favour of the accused even at bail stage.

Reliance is place in a case of **Muhammad Mizan vs the State reported in 1997 MLD Karachi 279**. Moreover, since, the whole case of the prosecution rests upon the evidence of the police official, therefore, their evidence is required to be minutely scrutinized at the time of trial whether the incident as alleged in the FIR allegedly committed by the applicant in a fashion as mentioned by the complainant in FIR or otherwise. There is nothing on record to show that the applicant is a previous convict or has been arrested in a case of similar nature in past. It is settled position of law that at the bail stage deeper appreciation is not required and only it is to be seen as to whether applicant is prima facie connect with the commission of the offence or not, hence tentatively on the ground as stated above the applicant has been able to make out a case of further inquiry into his guilt. Besides, the case has been challaned. Applicant is no more required for investigation.

6. Beholding the above, applicant is admitted to bail subject to his furnishing solvent surety in the sum of Rs.50,000/= (fifty thousand) and P.R bond in the like amount to the satisfaction of trial Court.

7. Needless to mention here that the observations made hereinabove are tentative in nature and shall not affect the merits of the case.

**JUDGE**