

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.
Cr.Bail Appln:No.S- 301 and 369 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE
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28-08-2017

Mr. Ejaz A. Awan, Advocate for applicant in Cr.B.A.No.S-301/17.

Mr. Altaf Sachal Awan, Advocate for applicant in Cr.B.A. No.S-369/17.

Mr. Erum Ahmed D.D.P.P for the State a/w I.O/SIP Roshan Ali.

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ABDUL MAALIK GADDI,J- By this common order I intend to dispose of above captioned Criminal Bail Applications as these bail applications relate to the same subject matter involving common question of law and facts as well as out of the same Crime viz. bearing No.37 of 2017 for offence under Sections 9(c) of C.N.S. Act, 1997 of P.S Jamshoro, through these bail applications the applicants seek bail in the said crime.

2. Precisely, prosecution case is that on 13.02.2017 at 2100 hours, near Sim Naala on the road connecting Jamshoro Hydeabad, accused Ghulam Akbar and Ghulam Qadir were arrested by the police party of P.S. Jamshoro, headed by SIP Roshan Ali Tunio and were found in joint possession of 3-Kgs and 800-grams of chars, hence the FIR.

3. It is stated by the counsel for applicants that applicants are innocent and have falsely been implicated in this case; that no public person has been cited as witness in this case, therefore there is violation of mandatory provision of section 103 Cr.P.C; that there is no mentioned in the FIR that how the property was weight; that applicants have no criminal history, nor ever involved in any criminal case and not a hardened and desperate, but falsely involved by the police; that the rule is bail not jail and keeping the applicants in jail by refusing the grant of bail is un-curable, if in case the applicants are found innocent after the trial is concluded, hence, prayed for

grant of bail. In support of contentions learned counsel for applicants relied upon the case law reported in 2012 SCMR page-573.

4. Conversely, learned D.D.P.P has argued that the name of applicants transpires in the FIR with specific allegation that from joint possession of applicants, the total charas vz. 3-kilo and 800-grams have been recovered and the case is at initial stage and that the chemical report is positive also on record.

5. Arguments heard and record perused.

6. The plain reading of the FIR shows that two packets of charas were recovered from the fold of shalwar of applicant Ghulam Akber and other two packets of charas were recovered from the rickshaw which were lying under the seat, but recovered property was not weighed separately which create ambiguity regarding the weight of the charas allegedly recovered from the applicants, therefore on this ground, matter requires further probe. It also stated in FIR that the applicants were carrying the charas for selling the same, but no any purchaser or fake purchaser cited in the memo of challan sheet, which shows that the case is of further inquiry. It appears from the record that the complainant has investigated the matter and it is yet to be considered at the time of trial whether the investigation has been carried in accordance with law or otherwise, even though, no public person has been cited as witness in this case, therefore there is violation of mandatory provision of section 103 Cr.P.C. Besides, the prosecution has not produced any material to show that the applicants are habitual offenders and involved in cases of similar nature. Applicants are in jail since date of their arrest, but prosecution had failed to examine even a single witness for period of six months, hence no one could be detained for an indefinite period and no apprehension of tampering with prosecution evidence existed, as all prosecution witnesses are police officials.

7. In view of above, I am fortified with the case of Bilawal vs. the State reported in 2016 MLD 1054 which reads as under:-

“---Ss.497 & 103---Control of Narcotic Substance Act (XXV of 1997), Ss.9 & 6--- Prohibition of narcotic drugs, etc.---Search to be made in presence of witnesses---Bail, grant of ---Delay, and contradictions in prosecution version, regarding sending of recovered substance/Charas to Chemical Examiner---Further enquiry---Twenty

five hundred grams of Charas was alleged to have been recovered from accused---Accused was alleged to have been apprehended during day time from a place, which was busy road, but no private person had been associated to act as mashir/witness---Private persons should have been given preference if they were available at the spot, rather than official personal, to maintain transparency of the recovery--High Court observed that the requirements of S.103, Cr.P.C, were mandatory regarding the recovery in presence of two members of public---No explanation had been advanced for sending the recovered substance with delay of sixteen days; whereas, chemical laboratory, was about fifty kilometers away from the police station---Recovered substance had been sent to the chemical examiner more than once without any explanation---Accused was no more required to the police---Accused had been behind bars since date of his arrest, but prosecution had failed to examine even a single witness for period of seven months---No one could be detained for an indefinite period---No apprehension of tampering with prosecution evidence existed, as all prosecution witnesses were police officials---Accused had made out a case for further enquiry---Bail application was accepted accordingly.”

8. Beholding the above, tentatively the applicants at this stage have made out the case for further inquiry, therefore they are admitted to bail subject to their furnishing solvent surety in the sum of Rs.100,000/= (one lac each) and P.R bond in the like amount to the satisfaction of trial Court.

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

JUDGE