

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.
Cr.Bail.Appln.No.S- 706 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing.

27.09.2017.

Mr. Rashid Raees, advocate for applicant.

Mr. Shahid Ahmed Shaikh, D.P.G a/w complainant SIP Hassan Haider Jaffri PS Maki Shah.

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ABDUL MAALIK GADDI, J- Having remained unsuccessful in obtaining his release on bail from the trial court in Crime No.49 of 2017 registered under sections 9(c) of Control of Narcotic Substances Act, 1997 at Police Station Maki Shah, Hyderabad, now the applicant Veshal son of Mohan Das b/c Gujrati Hindu is seeking his release on bail through instant bail application.

2. Concisely the facts of the prosecution case as per FIR on behalf of the State lodged by complainant SIP Hassan Haider Jaffri PS Maki Shah on 24.7.2017 at 200 hours are that on said date he alongwith his subordinate staff under entry No.21 at 1700 hours left PS for patrolling in official vehicle at Cantonment graveyard near foot-ball ground, they started snap checking when they found one person wearing paint shirt coming from Hill Top Incline towards cantonment graveyard road, who seeing the police tried to reverse by running but he was apprehended at 1930 hours and due to non-availability of public mashirs at that moment, complainant deputed PCs Shahid and Rashid Baig as mashirs and made enquiries from said person about his name and other particulars and also conducted his search. Said person disclosed his name as Veshal s/o Mohan Das by caste Hindu Gujrati r/o Gali No.01 Solider Bazar No.01 Karachi. Complainant recovered one black colour shopper from under beneath shirt and

paint from right and left side of abdomen from which 4 big and small pieces of chars were recovered. From the left side pocket of paint and cash of Rs.350/- was also secured. The recovered chars was weighed through electronic scale and become 2000 grams. The accused on inquiry about the recovered chars disclosed that he was going to sell said chars. The recovered chars alongwith black colour shopping bag was sealed in a cloth bag in presence of mashirs and such mashirnama of arrest and recovery was prepared. Thereafter, the accused and property were brought at PS where present 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 the alleged charas was foisted upon the applicant; that in final report under section 173 Cr.P.C, in which it is clear mentioned that the alleged charas recovered on 24.7.2017 but the investigating officer sent the alleged recovered charas to Karachi for chemical examination on 02.8.2017 after the delay of 08 days without any explanation, as such according to him the tempering with the alleged charas cannot be ruled out; 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. In support of his arguments, he relied upon case of Muhammad Sharief vs State (ANF GILGIT) reported in 2017 YLR 1282.

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 appellant to falsely involve him in present crime. According to him at this stage delay in sending

property to the chemical examiner is immaterial and need finding would prejudice to the case of prosecution.

5. I have given my anxious thought to the contentions raised at bar and have gone through the police papers so available before me. It is an admitted fact that in the final report under section 173 Cr.P.C it is mentioned that the alleged charas was recovered on 24.7.2017, but the investigating officer sent the alleged recovered charas to Karachi for chemical examination on 02.8.2017 after the delay of about 08 days for which no explanation has been furnished, therefore, the question with regard to tempering with the alleged recovered charas by the police official cannot be ruled out. It is also an admitted position that the case has been challaned. Applicant is no more required for investigation. The case of the prosecution rests upon the evidence of police officials, therefore, no question does arise for tampering with the evidence on the part of the applicant. Since, 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.

6. Beholding the above, applicant is admitted to bail subject to his furnishing solvent surety in the sum of Rs.75,000/= (seventy five 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

Ahmed/Pa