

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.
Cr.Bail.Appln.No.S-750 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing.

10.10.2017.

M/s Bhagwan Das Bheel and Imtiaz Ali Channa, advocates for applicant.

Mr. Shahzado Saleem Nahiyoona D.P.G

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ABDUL MAALIK GADDI, J- Applicant having remained unsuccessful in obtaining his release on bail from the trial court in Crime No.41 of 2017 registered under sections 9(c) of Control of Narcotic Substances Act, 1997 at Police Station GOR Hyderabad, now the applicant Khalid son of Muhammad Yousif is seeking his release on bail through instant bail application.

2. Concisely the facts of prosecution case are that complainant SI Altaf Hussain Jamali of PS GOR Hyderabad on 05.09.2017 lodged FIR on behalf of the state, stating therein that on 04.09.2017, he alongwith subordinate staff was on patrolling, when reached at Umedan Bhario Peer road near GTC Ground, he saw a person having plastic shopper in his hand, whom found suspected, he alongwith other staff encircled and apprehended him at about 0100 hours on 05.09.2017. On enquiry, the apprehended accused disclosed his name as Muhammad Khalid son of Muhammad Yousif, the shopper carried by him was taken into police custody. On checking the plastic shopper he found four patti's wrapped with plastic which was found charas which on weigh became of 1960 grams which was sealed at the spot. From personal search of accused, he also recovered Rs.100/-. Whereby after completing all legal formalities the accused

and case property was brought at PS and present FIR was lodged against the accused.

3. Learned counsel for applicant/accused argued that applicant / accused is innocent and falsely implicated in this false case; that there is delay of one hour in lodging FIR despite the fact that the distance in between PS and place of incident only 2 KM, but no plausible explanation has been furnished by the prosecution; that place of incident is busy road, used by the people round the clock but complainant failed to associate any private / independent witness; that in fact applicant contracted free will marriage with one Mst. Sonia daughter of Ramzan and previously he was engaged with one Mst. Jamana and on the day of incident applicant alongwith his wife had gone to Hyderabad city on his 125 motorcycle when they reached at Hussainabad Chowk, where complainant alongwith his staff stopped and they robbed his mobile phone, cash amount of Rs.2000/-and 125 motorcycle so also demanded huge illegal gratification, but on nonpayment of illegal gratification, implicated applicant /accused in the instant crime at the instance of one Jamna, who is involved in narcotics cases; that nothing incriminating has been recovered from possession of applicant / accused and the alleged charas has been foisted upon him; that accused is behind the bar since his arrest and there is no likelihood of absconding or tempering of prosecution case as all the PWs are police officials, therefore, he prayed to release the applicant / accused on bail.

4. On the other hand learned D.P.G has opposed the prayer of accused and submitted that public persons were not co-operating with police. He pointed out that 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 as good witnesses as private persons.

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 appears that 04.09.2017, the complainant SI Altaf Hussain Jamali alongwith subordinate staff was on patrolling, when reached at ***Umedan Bhario Peer road near GTC Ground***, he saw a person having plastic shopper in his hand, whom found suspected, he alongwith other staff encircled and apprehended him at about 0100 hours on 05.09.2017. On enquiry, the apprehended person disclosed his name as Muhammad Khalid son of Muhammad Yousif, the shopper carried him was taken into police custody. On checking the plastic shopper he found four patti's wrapped with plastic which was found charas which on weigh became of 1960 grams which was sealed at the spot. It is an admitted fact that the incident took place at thickly populated area, but the complainant failed to associate any private person to act as a witness to the event, hence the whole episode creates highly doubt in the prosecution case and requires probe. Further, the incident took place on 05.09.2017 and since then applicant/accused is in jail and no substantial progress has been made in trial. 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, despite of the fact that SI Altaf Hussain Jamali is himself the complainant and has also acted as an Investigating Officer in this case. Legally he could not assume this dual function and it was incumbent upon him to have entrusted the investigation of the case to another disinterested police officer, therefore, this fact also requires evidence at trial. 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

Ahmed/Pa