

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.
Cr.Bail.Appln.No.S-788 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE
------	-------------------------------

For hearing.

09.10.2017.

Mr. Muhammad Ali Rind, advocate for applicant.

Mr. Shahzado Saleem Nahiyoona D.P.G

=

ABDUL MAALIK GADDI, J- Having remained unsuccessful in obtaining his release on bail from the trial court in Crime No.53 of 2017 registered under sections 9(c) of Control of Narcotic Substances Act, 1997 at Police Station Jam Dattar, now the applicant Dost Muhammad s/o Muhammad Saleh is seeking his release on bail through instant bail application.

2. The allegations of prosecution against present accused as per FIR are that on 26.07.2017 at 0900 hours during patrolling complainant SIP Drhoon with his staff reached at Head Jamro Jamsahib near Shah punjo stop where he saw present applicant was standing having plastic shopper in his hand. The complainant arrested him and recovered 1930 gram charas from his possession alongwith cash amount of Rs.100/=. After observing formalities scaling 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 which 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; that the punishment of the offence does not fall within the ambit of prohibitory clause of section 497 Cr.P.C, hence he prayed that accused be released 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 on 26.07.2017 at 0900 hours during patrolling complainant SIP Drhoon with his staff reached at Head Jamro Jamsahib near Shah punjo stop where he saw that applicant was standing having plastic shopper in his hand. The complainant arrested him and recovered 1930 gram charas from his possession alongwith cash amount Rs.100/=. It is an admitted fact that the incident took place at thickly populated area in daylight time, 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 26.07.2017 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. 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. 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 SIP Darhoon Khan Mallah 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