

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

Cr. Bail application No.S- 257 of 2017

DATE

ORDER WITH SIGNATURE OF JUDGE

04.10.2017.

Syed Tarique Ahmed Shah Advocate for applicant/accused.

Mr. Shahid Shaikh DPG

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ABDUL MAALIK GADDI, J: Applicant/accused having remained unsuccessful in obtaining his release on bail from the trial court in crime No.16 of 2017 registered U/s 9-C Control of Narcotics substances Act 1997 at police station Hali road Hyderabad. Now applicant/accused Abdul Salam s/o Gul Muhammad is seeking his release on bail through instant bail application.

2- It is the prosecution case that on 09.2.2017 applicant/accused was arrested from Railway track Hazara colony American Quarters Hyderabad at 0300 hours by SIP Asif Ali Jatoi and recovered 2970 grams charas from his possession in presence of mashirs.

3- Learned counsel for applicant/accused submits that applicant/ accused is innocent and has falsely been implicated in this case due to enmity, According to him the incident was taken place in a thickly populated area on spy information but no private person has been associated to witness the proceedings of alleged arrest and recovery. He further submits that in this matter co-accused Ghulam Muhammad and Zarak Khan have been granted bail by the trial court vide orders

dated 20.2.2017 and 20.4.2017 respectively and the case of applicant/accused is almost on same facts, therefore, according to him, this applicant/accused is also entitled for same treatment. He further submits that in this case the complainant is SIP Asif Ali Jatoi who has also conducted investigation, therefore, according to him, his investigation cannot be safely relied upon and false implication of applicant/accused cannot be ruled out.

4- Learned DPG has opposed this bail application but he is not in a position to controvert the above legal and factual position.

5- It is admitted position that case has been challaned and applicant/accused is no more required for investigation. The case of prosecution rests upon the evidence of police officials, therefore, no question does arise for tampering of their evidence at the hands of applicant/accused. Since whole the case of prosecution rests upon evidence of police officials, therefore, their evidence is required to be minutely scrutinized at the time of trial whether the offence as alleged in the FIR is committed by the applicant/accused in a fashion as narrated by the complainant or otherwise. There is nothing on record to show that applicant/accused is previous convict or has been arrested in a case of similar nature in past. It is an admitted fact that complainant SIP Basharat Ali Mallah who is complainant of the case, also conducted investigation therefore, according to applicant/accused his investigation cannot be safely relied upon, although the evidence of complainant police official who also become investigating officer is admissible in the evidence, yet for safe administration of justice, it was incumbent upon complainant to hand over the investigation of the case to any disinterested police official so nobody can raise finger upon the investigation of police official, however, this fact requires evidence. Learned counsel for applicant has also filed a statement alongwith true copy of diary of trial court dated 27.9.2017 showing that complainant is not attending the court although NBWs have been issued against him and applicant/accused is regularly producing before the trial court by the jail authorities, under these circumstances it does not know, when trial shall be completed.

6- It is admitted fact that co-accused Ghulam Muhammad against him 1480 grams of charas was recovered and Zarak Khan against him 1480 grams of charas was recovered have been granted bail by the trial court and case of applicant/accused is on same footing, therefore, this applicant/accused is also entitled for same treatment. Therefore, in view of what I have observed above, the applicant/accused has made out the case for grant of his bail.

7- I accordingly allow this bail application and admit the applicant/accused on bail after his furnishing solvent surety in the sum of Rs.100,000/- (Rupees One lac only) and PR Bond in the like amount to the satisfaction of the trial court.

8- Since the case of prosecution rests upon the evidence of two police officials, therefore, the trial court is directed to expeditiously proceed the matter and decided the case within a period of two months. The compliance report be submitted to this court through Additional Registrar.

9- Before parting with the order, I would like to make it clear that observations if any, made in this order, is tentative in nature and shall not affect the merits of the case.

JUDGE

A.Rasheed