

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI,
Cr.B.A.No.1567 of 2018.

DATE ORDER WITH SIGNATURE OF JUDGE

For hearing of bail application.

11.02.2019

Mr. Dur Muhammad, advocate for Applicant.

Mr. Siraj Ali Khan Chandio, Addl. P.G. Sindh alongwith ASI Nadeem Akhtar, CRO Branch.

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Through instant bail application, applicant/accused Hayat son of Muhammad Umer, seeks post arrest bail in Crime No.88 of 2018 registered at Police Station Gharo, for offence punishable u/s 6/9 (c), of C.N.S. Act, 1997.

2. Precisely, relevant facts of the case are that on 27.08.2018 police party of P.S. Gharo, headed by Inspector Qurban Ali Mallah, was busy in patrolling of the area. It was about 1030 hours; during patrolling when the police reached at Dargah Jameeluddin Shah, they saw a person standing in suspicious condition, who on seeing police party tried to run away but the police party succeeded in apprehending him, who on inquiry disclosed his name as Hayat son of Umer. During his search police recovered a black colour plastic bag from his hand which containing 04 big pieces of charas quantified 02 kilograms while five currency notes of Rs.100/- each total denomination of Rs.500/- were also recovered from his front pocket of shirt. He arrested the accused and sealed the recovered property on the spot in presence of mashirs and then brought him and the recovered property at police station where FIR was lodged on behalf of State. After usual investigation he was sent up for trial.

3. After registration of FIR, the investigation was followed and in due course challan was submitted before the Court competent jurisdiction.

4. Learned counsel for the applicant *inter alia* contends that recovery affected from the applicant is 02 Kilograms charas; chemical report is delayed; applicant is not previously involved in same nature of the cases; all the prosecution witnesses are police officials, hence there is no question of tampering with the prosecution evidence. He lastly contended that applicant is behind the bar since last more than five months.

5. Learned D.P.G. while opposing this application, has contended that this is a crime against society, hence, he is not entitled for concession of bail.

6. After careful consideration of contentions of learned counsel for the parties and meticulous examination of available record, alleged contraband narcotics is 02 kilograms grams charas; applicant has been in continuous custody since last more than five months and is no more required for any purpose of investigation nor the prosecution has claimed any exceptional circumstance which could justify keeping the applicant behind the bars for an indefinite period. All the prosecution witnesses are police officials, hence there is no question of tampering with the evidence. In the case of Jamaluddin alias Zubair Khan vs. The State reported in 2012 SCMR 573, wherein Hon'ble Supreme Court has held that:-

"4. Without entering into the merits of the case, as the quantum of sentence has to be commensurate with the quantum of substance recovered, we doubt the petitioner can be awarded maximum sentence provided by the Statute. Needless to say that the Court while hearing, a petition for bail is not to keep in view the maximum sentence provided by the Statute but the one which is likely to be entailed in the facts and circumstances of the case. The fact that petitioner has been in jail for three months yet commencement of his trial let alone its conclusion is not in sight, would also tilt the scales of justice in favour of bail rather than jail."

Therefore, keeping *peculiar* facts of instant case; continuous detention of more than eight months as well *minimum* punishment, which *normally* may be considered while dealing with bail plea, I am of the view that scale tilts in favour of the applicant for grant of bail as no *useful* purpose is likely to be served with further detention of applicant pending determination of his guilt.

07. Keeping in view the above given circumstances, *prima facie*, applicant has succeeded to bring his case within the purview of subsection (2) of section 497 Cr.P.C, for this reason, he is admitted to post arrest bail subject to his furnishing solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) and P.R Bond in the like amount to the satisfaction of trial Court.

JUDGE

Sajid