

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Cr. Bail Application No.183 of 2019

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

For hearing of bail application.

22.02.2019

Mr. Nadir Khan Burdi, advocate for the applicant.
Ms. Rubina Qadir, D.P.G.

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NAZAR AKBAR, J.- Through the instant bail application, applicant/ accused Shahzad son of Hayat Khan seeks bail after arrest in FIR **No.11/2019**, under Sections **6/9-C CNS Act, 1997** registered at police station Gadap City, Karachi after failing to obtain post arrest bail from the Sessions Judge, Malir Karachi.

2. To be very precise, the facts of the prosecution case as disclosed in the FIR are that on **06.01.2019** complainant/ASI Mazhar-ul-Haq lodged FIR stating therein that on same day during patrolling he arrested applicant/ accused Shahzad from Cadet College road, near Kotchi Camp Gadap, Malir Karachi and recovered a plastic shopper containing two rods of charas weighing 2000 grams and cash Rs.490/- from his possession in presence of mashirs. After observing required formalities on the spot the accused alongwith recovered charas was brought at PS where FIR was lodged.

3. Learned counsel for the applicant contended that the applicant is innocent and has not committed any crime and the police has malafidely arrested the accused and has falsely implicated in this case as nothing has been recovered from him. He further contended that the applicant is a student of second year and is hardly 19/20

years of age and it is beyond understanding that at 0030 hours a student would be walking down the road carrying shopper in his hand openly in which police found 2000 grams charas that too he did not even attempted to run away or throw the shopper on the road. He further contended that though the place of incident is shown to be near Cadet College and Kotchi Camp yet no any private witness has been associated in this case which makes the case of prosecution doubtful and requires further enquiry. He argued that no previous criminal record of the applicant is there, therefore, he prayed that the applicant may be granted bail. In support of his contention, he relied on the following case-laws:-

- i. *Abdul Salam vs. The State (2018 P.Cr.L.J Note 94);*
- ii. *Gul Rehman vs. The State (2006 YLR 207);*
- iii. *Ali Raza vs. The State (2017 P Cr. L.J Note 41);*
- iv. *Muhammad Zubair vs. The State (2017 YLR Note 332);*
- v. *Abdul Sattar vs. The State and others (2014 P Cr.L.J 1335);*
- vi. *Manzoor and 4 others vs. The State (PLD 1972 Supreme Court 81);*
- vii. *Syed Hyder Ali Shah vs. The State (2016 P Cr.L.J 975);*
- viii. *Muhammad Bilal vs. The State (2009 MLD 335).*

4. Conversely, Learned DPG opposed the grant of bail on the ground that 2000 grams charas has been recovered from the applicant and he intended to sell the same to college students, therefore, the applicant does not deserves to be released on bail. She, however, states that chemical examiner report has not yet received.

5. I have considered the arguments advanced by the learned counsel for the parties and perused the record. From FIR and challan I have noticed that:-

- i. Learned DPG concedes that no previous criminal record of applicant is found and the CRO of the applicant is NIL;
- ii. The applicant is hardly of 19/20 years of age and is student of second year;
- iii. Till date even chemical examiner's report has not been obtained, therefore, his case is a case of further inquiry.
- iv. It is an admitted position that case has already been challaned and applicant is no more required for investigation;
- v. The case of prosecution rests upon the evidence of police officials, therefore, no question arises for tampering of their evidence of their evidence at the hands of the applicant.

6. The above grounds are enough for grant bail to the applicant/accused. Consequently, instant bail application is allowed. The applicant is admitted to bail subject to furnishing solvent surety in the sum of **Rs.100,000/-** (*Rupees One hundred Thousand*) and P.R bond in the like amount to the satisfaction of the trial Court.

7. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicant/accused on merits.

JUDGE

Ayaz Gul