

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
Cr. Bail Application No.1691 of 2018

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DATE            ORDER WITH SIGNATURE(S) OF JUDGE(S)  
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For hearing of bail application

**01.02.2019**

Syed Samiullah Shah, advocate for the applicant.  
Ms. Rahat Ahsan, Addl. P.G.  
I.O Muhammad Irshad present.

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Through the instant bail application, applicant/accused Waris son of Alam Khan, seeks bail after arrest in FIR **No.265/2018**, under Sections **6/9-C CNS Act, 1997** registered at police station Sohrab Goth, Malir, Karachi after failing to obtain post arrest bail from the Special Court-II (C.N.S) Karachi.

2. Brief facts of the prosecution case as disclosed in the FIR are that on 29.07.2018, at about 0900 hours Complainant ASI Faiz Muhammad of P.S Sohrab Goth, Karachi alongwith other police officials arrested the accused and recovered 1250 grams of Charas from his possession. After observing required formalities on the spot the accused alongwith recovered charas/Hashish were brought at PS where FIR was lodged.

3. Learned counsel for the applicant contended that the police has malafidely arrested the accused and has falsely implicated in this case as nothing has been recovered from him. He emphasis that the enmity of the police and the Investigating Officer against the applicant may be appreciated from the challan filed. All the witnesses are police officers, irrespective of the fact it is not necessary, there should have been an effort to engage a private person as witness in the offence. The I.O has deliberately and malafidely shown him involved in four cases though he

was not even party to the said case. The I.O is present in Court and he is unable to satisfy the Court that why and how he has shown the applicant involved in the FIRs bearing FIR No.116/2017 under Section 6/9/B-CNS, FIR No.182/2017 under Section 3/4 Hudood Ordinance, FIR No.76/2018 under Section 353/324/34 PPC, & FIR No.89/2018 under Section 13/D in the challan against the accused.

4. The counsel for the State too, has no answer to such lapses on the part of I.O and PDSP to send it for trial. Learned counsel for the applicant has placed on record copies of the orders on these FIRs.

i. There is no record of FIR No.116/2017 and the I.O is also unable to bring FIR No.116/2017 against the applicant.

ii. The applicant/ accused has been acquitted in second **FIR No.182/2017** under Article 3/4 Hudood Ordinance. He has placed on record acquittal order.

iii. The applicant's name is not even mentioned in **FIR No.76/2018** under Section 353/324/34 PPC.

iv. The fourth case mentioned in the challan is **FIR No.89/2018** for an offence under **Section 13/D**, though Section 13/D does not refer to any offence. However, under earlier Arms Ordinance prior to 2013, it was an offence but even PDSP agreed to send the accused for trial as hardened criminal involved in an offence which is not an offence anymore.

The above facts confirm that entire prosecution story / investigation against the accused is beyond human comprehension. The challan submitted by the I.O in the frivolous case, and therefore, the applicant is admitted to bail subject to furnishing solvent surety in the sum of Rs.10,000/- (*Rupees Ten Thousand*) and P.R bond in the like amount to the satisfaction of trial Court.

5. However, before concluding, I am under statutory obligation to make sure that SSP Investigation should hold a very comprehensive inquiry against the PDSP who has approved challan of **FIR No.265/2018** and also against this I.O for showing four different cases in the challan though none is against the accused except one in which he has been acquitted. These cases were mentioned in the challan to influence the Court in an otherwise weak case to obtain conviction by showing that accused is habitual criminal. It is pure indication of incompetency in the police department. The SSP (Investigation), Malir, should conduct/ start departmental inquiry against the I.O and PSDP within three days under intimation to this Court through MIT-II, substantial progress of inquiry should also be submitted to this Court every month and final inquiry should be concluded in three months. Failure to comply with this order would definitely have its consequences.

6. 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