ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

CR. BAIL APPLICATION NO.1635/2018

Date	Order with signature of Judge

07.02.2019

Mr. Munir Ahmed Gilal advocate for applicant.
Mr. Abdullah Rajput, APG.

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SALAHUDDIN PANHWAR, J: Applicant Amir son of Mir Zaman has approached this Court seeking bail in crime No.606/2018, u/s 6/9-C C.N.S Act, 1997, P.S. Sachal after his bail application was dismissed by the learned trial Court.

2. Brief facts of the case are that Complainant ASI Shakeel Ahmed of PS Sachal, lodged FIR alleging that he was patrolling alongwith accompanied staff; when they reached at Madina Colony near Rahim Raza Society, Karachi at about 1420 hours found two persons in suspicious condition on motorcycle who were stopped; they disclosed their names as Amir son of Mir Zaman and Hassam son of Zahid; complainant recovered a polythene bag from right hand of accused Amir containing Charas in shape of patties/bars weighing 3700 grams and a polythene bag also recovered from the hand of accused Hassam containing Charas weighing 225 grams, they were arrested and the motorcycle was secured under section 550 Cr.P.C.

3. I have heard learned counsel for applicant and learned Additional Prosecutor General Sindh and perused the record.

4. Learned counsel for the applicant has contended that the accused has falsely been implicated in this case; that real culprit who was selling charas was released by the police at the spot after

getting bribe while the applicant who was just passing by from there has been involved and arrested hence alleged recovery is false, fabricated and foisted upon the applicant just to save the real culprit; that there is no description in the FIR as to from where the complainant arranged the measurement instrument; that place of alleged recovery is thickly populated area however no private witness has been associated; that there is delay of one hour and 45 minutes in lodging the FIR. Learned counsel relied upon PLD 1996 Cr.C. Karachi 691.

5. Learned APG has vehemently opposed grant of bail to applicant on the ground that huge quantity of charas weighting 3700 grams was recovered from applicant and in view of section 51 of the Act 1997 bail cannot be granted in cases of recovery of narcotics; he further contended that section 25 of the C.N.S. Act 1997 has excluded applicability of provisions of section 103 Cr.P.C. in narcotic cases and non-inclusion of private witness is not a serious defect.

6. The grounds, so taken before this Court, are nothing but same as were agitated before the learned trial Court. It would suffice for the ground, raised with reference to Section 103 Cr.P.C, that application thereof has *specifically* been excluded by virtue of Section 25 of the CNS Act, 1997, therefore, learned trial court rightly attended this plea while observing as:-

> "So far as contention of learned counsel for the accused that the provision of section 103 Cr.P.C. were not complied with as no other respectable persons were associated has no force, firstly for the reason that provision of section 103 Cr.P.C. has been excluded under the provision of section 25 of CNS Act, 1997 and secondly the non-compliance cannot be considered as a strong ground for holding that the trial of the accused is bad in the eye of law. There is consistent opinion of the Apex Court that police officials are competent witnesses and their statement cannot be discarded merely for the reason that they

belong to the police department. Reference is made to 2001 SCMR 36 and PLD 2004 Peshawar 246. Reference may also be made to 2010 SCMR 1962 where it is held:--

> "We are conscious of the fact that no private witness could be produced but it must not lost sight of that reluctance of general public to become witness in such like cases by now has become a judicially recognized fact that there is no way out but to consider the statement of an official witness as no legal bar or restriction whatsoever has been imposed in this regard. We are fortified by the dictum laid down in Hayat Bibi v. Muhammad Khan (1976 SCMR 128), Yagoob Shah v. The State (PLD SC 53), Muhammad Hanif v. The State (2003 SCMR 1237). It is well-settled by now that police officials are good witnesses and can be relied upon if their testimony remained unshattered during cross-examination as has been held in case of Muhammad Naeem v. The State (1992 SCMR 1617), Muhammad v. The State (PLD 1981 SC 635). The contention of Mr. Kamran Murtaza, learned Advocate Supreme Court on behalf of petitioner qua violation of provisions as enumerated in section 103 Cr.PC seems to be devoid of merit when examined in the light of provisions as contained in section 25 of the Act which provides exclusion of section 103 Cr.P.C."

Since, law is quite clear and obvious that an accused while seeking bail in a case, falling within prohibitory clause, is required to bring his case within meaning of ***further inquiry*** not by raising defence but from collected material, which too, by tentative referral thereof. It may well be added that keeping in view the severity of such like offences, the legislatures have included section 51 in the Act which, *prima facie,* creates *bar* in granting bail in such like cases therefore, the bail, *normally,* needs not be granted on mere claim of **'further inquiry'.** This aspect was rightly appreciated by trial court while observing as:-

> "....Hon'ble Supreme Court of Pakistan while dealing a bail application (Socha Gul v/s. State) observed in the following manner:
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> > "It is pertinent to mention that the offence punishable under CNS Act, 1997 are by its nature heinous and considered to be offences against the society at large and it is for this reason that the statute itself has provided a note of caution under section 51 of CNS Act, 1997 before enlarging an accused on bail in the ordinary course. When we refer to the standards set out under section 497 Cr.P.C. for grant of bail to an accused involved in an offence under section 9-C CNS Act, 1997, even on that basis we find that an accused charged with an offence, prescribing various punishments, as reproduced above, is not entitled for grant of bail merely on

> account of the nature or quantity of narcotic substance, being 4 Kgs. Firstly, as deeper appreciation of evidence is not permissible at bail stage and secondly, in such situation, looking to the peculiar features and nature of the offence, the trial Court may depart from the normal standards prescribe in the case of Ghulam Murtaza (supra) and award him any other legal punishment. Thus, in our opinion, ratio of judgment in the case of Ghulam Murtaza (supra) is not relevant at bail stage."

Thus, I find no substance in the plea, so raised by counsel for the applicant / accused, regarding his substitution by releasing real culprit. Without any intention to make any binding observation, I would add that in absence of any serious *animosity* there appears no reason for police to implant such huge quantity of charas, which, admittedly, the applicant / accused has not attempted to establish by placing any documentary material.

7. As regard the grounds, raised regarding arrangement of measurement tool etc, it would suffice to say that such like aspects cannot be touched / examined at bail stage as such like questions would always require a response from the concerned.

8. In view of what has been discussed above, I am of the clear view that applicant / accused has failed to make out a case for grant of bail. Accordingly, the bail plea of the applicant / accused is hereby declined. While parting, the trial court is directed to ensure conclusion of trial within a period of three months which, the trial court, shall do without being influence from any observation made hereinabove. In case of non-compliance, applicant would be at liberty to repeat bail application.

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