

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Cr. Bail Application No.1699 of 2018

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

For hearing of bail application.

04.03.2019

Mr. Saifullah, advocate for the applicant.
Ms. Amna Ansari, Additional P.G.

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NAZAR AKBAR, J.- Through the instant bail application, applicant/ accused Inayatullah son of Habibullah after failing to obtain post arrest bail from Judge Special Court-II (CNS) Karachi seeks bail after arrest in FIR **No.05/2018**, under Sections **6/9-C CNS Act, 1997** registered at police station Excise (South), Karachi.

2. To be very precise, the facts of the prosecution case as disclosed in the FIR are that on **17.10.2018** complainant Excise Inspector Sabir Hussain Qureshi of P.S Excise, District South, Karachi alongwith other excise officials on spy information reached near Edhi Centre, Main Road Tower at about 1645 hours and stopped a rickshaw bearing registration No.D-11801 and arrested the driver of the rickshaw who disclosed his name as Inayatullah son of Habibullah (present applicant) and recovered a white cloth bag under the rear seat of the rickshaw containing two packets of charas weighing 02 Kgs. 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 been falsely implicated in this case. He further

contended that applicant was arrested on 15.10.2018 at North Nazimabad along with rickshaw and on non-fulfillment of illegal demand of the complainant, he was booked in this case. He argued that the complainant himself conducted investigation of the case which is not permissible under the law. He further contended that though the place of incident is a thickly populated area and alleged recovery was effected in a day light time but 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.

4. Conversely, Learned Additional P.G opposed the grant of bail on the ground that 02 Kgs charas has been recovered from the applicant, therefore, the applicant does not deserve to be released on bail.

5. I have considered the arguments advanced by the learned counsel for the parties and perused the record. From FIR and record 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 place of occurrence is situated in thickly populated area and the time of alleged recovery is day light time but no private mashir has been associated as eye witness in the FIR.
- iii. No challan has been submitted by the prosecution so far and the applicant is behind the bars since 18.10.2018;
- iv. 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;

- v. Learned counsel for the applicant in support of above circumstances has relied on the cases reported as **PLD 2002 SC 590** and **2018 P Cr.L.J 1307** and both cases are applicable in the facts of the case 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