

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Cr. Bail Application No.203 of 2019

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

For hearing of bail application _____

12.04.2019

Mr. Mehboob Illahi Saham, advocate for the applicant.
Ms. Rahat Ehsan, Addl.P.G. Sindh.

-.-.-.-.-

1. Through instant bail application, applicant/accused seeks bail after arrest in **FIR No.160/2018**, under **Section 6/9-C** CNS Act, **1997** registered at police station Rizvia Society, Karachi. Earlier the applicant/accused approached the Special Court-II (C.N.S) Karachi for post arrest bail, which was declined vide order dated **15.08.2018**. Thereafter, the applicant approached this Court for grant of post arrest bail.

2. Brief facts of the prosecution case as per FIR are that on 22.6.2018 at 0615 hours, ASI-Syed Muhammad Afsar complainant of P.S, Rizvia Society, alongwith his staff during patrolling reached at Service road Nazimabad No.1, near Nadria Chapal Market, Karachi on motor cycle bearing registration No.KDM-8849 and apprehended above named accused and from the possession of accused Irfan recovered plastic shopper contained one big and one little packets of Heroin weighing 1100 grams Heroin powder and one pistol 9MM loaded with four live bullets and from the possession of co-accused Zakir @ Zako recovered plastic shopper contained 1050 grams Heroin. After observing required formalities

on the spot the accused alongwith recovered Heroin was brought at PS where FIR was lodged.

3. Learned counsel for the applicant contended that applicant/accused is innocent and has falsely been booked in this crime by the complainant. He further contended that alleged recovery is foisted upon the applicant as nothing has been recovered from possession of the applicant, therefore, the case requires further inquiry, therefore, applicant / accused is entitled for concession of bail. Learned counsel for the applicant has relied upon the following case law.

- i. Shahid Ali Laghari ..Vs.. The State (2014 P.Cr.L.J 427)
- ii. Wajid alias Waji ..Vs.. The State (2016 P.Cr.L.J 831)
- iii. Muhammad Akram ..Vs.. The State (2016 P.Cr.L.J 1075)
- iv. Lal Bux ..Vs.. The State (2017 MLD 1164)

4. Learned Addl. P.G opposed the bail application contending that recovery is made from the applicant/accused and present applicant is also involved in other cases, therefore, the present applicant is not entitled to concession of bail. She referred to two cases but in both the cases the appellant has been acquitted on merit and he has presented acquittal orders in both the cases.

5. I have heard the arguments and perused the record and I have noticed as under:-

- i. No independent eye witness is joined in order to attest the memo of arrest and recovery.

- ii. Present case appeared to be a borderline case, which attracted the provisions of Ss.9(b) & 9(c) of Control of Narcotic Substance Act, 1997 and the benefit of such discrepancy is to be extended to the accused.
- iii. He is no more required for further investigation; therefore, no useful purpose would be served by keeping the applicant behind the bars for indefinite period.
- iv. In earlier cases the accused has been acquitted and therefore, he cannot be considered as hardened or habitual criminal.
- v. The case law relied by him squarely cover the facts of the case of appellant too.

6. In view of the above, the applicant / accused is admitted to bail subject to furnishing solvent surety in the sum of **Rs.1,00,000/-** and P.R bond in the like amount to the satisfaction of 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

SM