

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Bail Application No. 424 of 2018

Date	Order with Signature of the Judge
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For hearing of bail application.

Heard on	:	04.06.2018
Date of order	:	14.06.2018
For Applicant	:	Mr. Mallag Assa Dashti, Advocate.
For State	:	Mr. Firdous Faridi, Special Prosecutor for Customs, Mr. Muhammad Javed K.K., Asstt. Attorney General and I.O/Inspector Muhammad Farooq.

Kausar Sultana Hussain, J. On dismissal of bail Application No. Nil of 2017, by the trial Court, vide order dated 09.11.2017, the applicant Mohammad Sharif son of Azeem has approached this Court, by filing instant bail application under Section 497 Cr.P.C, for post-arrest bail in case FIR No. ASO-178 of 2017-HQ, under Section 6/9-C & 15 CNS Act, 1997, registered at P.S. Model Customs Collectorate of Preventive Anti-Smuggling Organization NMB Wharf, Karachi.

2. Succinct prosecution story as narrated in the FIR by complainant SPO Azhar Malik are that on 23.08.2017 he alongwith subordinate staff was on patrolling duty within the city area. Meanwhile, at about 05:00 pm while they were coming back from Sohrab Goth towards city area, they saw a Master Foreland Mini Truck bearing Reg. No.JY-3236 moving towards Liaquatabad Dak-Khana stop. After seeing them, the driver of said truck accelerated the speed of truck, which created strong suspicion that some doubtful goods are loaded in said truck. They chased the said truck and finally intercepted it at S.M Tariq Road. The driver of said truck disclosed his name as Muhammad Sharif S/o Azeem. They carried out cursory search of said truck/ vehicle and recovered 18 plastic drums (assorted color), duly stuff with liquid having pungent stench emanating out of three leaked plastic drums. No document pertaining to the load, except registration documents

of the vehicle were found from said truck, hence the driver as well as truck alongwith recovered material were taken into custody and present FIR was lodged.

3. I have heard the learned counsel for the applicant, Special Prosecutor for Custom, Assistant Attorney General and Investigation Officer of this case.

4. Learned counsel for the applicant/accused has argued that the applicant/accused is innocent and has no relation with the alleged offence, neither he is driver nor owner of the vehicle and goods, he is conductor of the vehicle and has been implicated by the custom authority with malafide intention and ulterior motives. He next contended that case of the accused falls within the category of juvenile as per his date of birth mentioned in admit card of Board of Secondary Education, Karachi, hence he is entitled for bail. Per learned counsel there is no evidence on record against the applicant/accused, neither he has the connivance nor has any knowledge about the alleged offence, accused is a minor and belongs to a very poor family and has no concern with the alleged offence. Per learned counsel the applicant/accused is neither habitual criminal nor previously convicted in any offence. Learned counsel further contended that sections 6, 7, 8 & 14 are not applicable under the circumstances of this case, because place of seizure is not border area. Learned counsel for applicant/accused lastly argued that there is no plausible evidence against the applicant/accused and also FIR was lodged with delay, which also create serious doubts and case requires further inquiry. Learned counsel for applicant/accused prayed that since the offence does not fall within the prohibitory clause, therefore applicant/accused may be admitted on bail. In support of his arguments the learned counsel has relied upon **(i) 2007 YLR 904 & (ii) 2016 S.L.J 976.**

5. Conversely, learned Special Prosecutor has vehemently opposed this bail application and argued that the applicant/accused, who was driving said truck, is the responsible for recovered case property in absence of any claimant. He further

contended that recovered case property is prohibited chemical Acetic Anhydride and the same is used for preparation of heroin powder. He lastly contended that applicant/accused was arrested at the spot and is not minor, hence is not entitled for grant of bail, therefore, present bail application may be rejected.

6. After hearing arguments of both the parties and perusal of record it reveals that the applicant/accused was arrested on the spot and 18 drums containing prohibited chemical of 3176 KGs Acetic Anhydride were recovered from his possession. Further, as per inventory prepared by Investigation Officer of this case the value of recovered Acetic Anhydride is about 1,58,00,000/-, therefore, such huge quantity cannot be foisted upon accused. Per learned counsel for applicant/accused, the applicant/accused is minor, however, as per report of Medical Board the age of applicant/accused is about 19-20 years, hence he cannot be said to be a minor. More particularly, recovery of huge quantity of prohibited chemical from the possession of applicant/accused brings the case of applicant/accused within the ambit of prohibitory clause of section 497(i) Cr.PC, therefore, I am not inclined to grant present bail application, accordingly the same is dismissed.

7. The observations recorded above are tentative in nature, therefore, trial Court shall not be influenced in any manner whatsoever.

JUDGE

Sajjad Ali Jessar