

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No. 710 of 2018

Date Order with signature of Judge

For hearing of bail application.

Dated of hearing : **19.06.2018**
Date of Order : **26.06.2018**
For applicant/accused : **Mr. Dur Muhammad Mallah advocate**
For State : **Mr. Zahoor Ahmed Shah, D.P.G**

Kausar Sultana Hussain, J:- Through instant Bail Application, applicant/accused Rasool Bux @ Rasoola S/o Ahmed seeks his release on post arrest bail in Crime No. 226/2017 u/s 6/9-C CNS Act, registered at PS Gulbahar, Karachi. The bail plea was raised by him before the trial Court but his request was turned down vide order dated 13.02.2018. The case challan has been submitted by the police and the same is now pending for trial before the Court of learned IInd Special Judge, C.N.S at Karachi (The State versus Rasool Bux @ Rasoola).

2. The brief facts of prosecution case are that on 23.11.2017 complainant ASI Khursheed Ahmed of PS Gulbahar was on patrol duty alongwith his subordinate staff. During patrolling he received spy information that two motorcyclists are selling Charas at Nadi Kinara Pulia, Haji Mureed Goth, Khamosh Colony, Gulbahar. After receiving such information, they reached at the pointed place at about 1700 hours and on the pointation of informer apprehended both the accused persons, who disclosed their names as Rasool Bux @ Rasoola S/o Ahmed and Wahab S/o Zafar Hayat. They conducted their search and from the possession of applicant/accused Rasool Bux @ Rasoola recovered 82 Rods of Charas weighing 1200 grams, while from the possession of co-accused they recovered one .30 bore pistol, loaded with magazine containing three live rounds. Hence present FIR.

3. After registration of the case, police investigated and after completion of legal formalities submitted challan before the competent Court of law having jurisdiction.

4. Learned counsel for applicant/accused argued that the applicant is absolutely innocent and has been falsely implicated in this crime. The learned counsel for applicant/accused next contended that nothing has been recovered from the possession of applicant/accused and the alleged recoveries have been foisted upon him by the police due to non-payment of bribe. Learned counsel for applicant/accused further contended that as per FIR/chalan, police has prior information about the alleged availability of applicant/accused, however, no private witness of locality has been associated as a mashir, which is violation of section 103 of Cr.PC. Learned counsel for applicant/accused further contended that since the alleged offense does not fall within the prohibitory clause, therefore, it is well settled principle of law that the offense which does not fall within the prohibitory clause, the grant of bail is rule and refusal is an exception. Learned counsel for applicant accused also contended that prosecution violated the mandatory provisions of Section 21 and 36 of Control of Narcotics Act, 1997. Learned counsel for applicant/accused lastly contended that the case of applicant/accused is doubtful and the benefit of doubt goes in favour of applicant/accused, therefore, the present bail application may be allowed and the applicant/accused may be enlarged on bail.

5. Conversely, on the other hand, learned D.P.G for the State formally opposed the bail application.

6. I have heard the arguments and perused the material available on record. Prima facie accused was red handedly arrested on the spot and a substantial quantity of 1200 grams Charas has been recovered from his possession and the case falls under prohibitory clause. Though there is no independent witness, yet accused has not alleged the enmity with the police officials, as to why they falsely implicated him in this case. Since sufficient material is available on record to

connect the applicant/accused with the commission of offence, therefore, I find no merits in the present bail application and the same is dismissed accordingly.

7. Needless to say that the observations recorded above are tentative in nature, therefore, the trial Court shall not be influenced in any manner whatsoever.

JUDGE

Sajjad Ali Jessar /PA