

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No. 825 of 2018

Date	Order with signature of Judge
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For hearing of bail application.

Dated of hearing: 28.06.2018

Date of Order: 11.07.2018

Mr. Asif Ali Jokhio, advocate for applicant/accused

Ms. Seema Zaidi, DPG

Kausar Sultana Hussain, J:- Through instant Bail Application, applicant/accused Munir Ahmed S/o Saleh Muhammad seeks his release on post arrest bail in Crime No. 79/2018, registered at PS Gulshan-e-Maymar, Karachi under Section 6-9/C CNS Act, 1997. The bail plea was raised by him before the trial Court but his request was turned down vide order dated 28.05.2018. The case has been challaned by the police and the same is now pending for trial before the Court of learned 1st Special Judge, C.N.S at Karachi (The State versus Nazir Ahmed & another).

2. I have heard the learned counsel for the applicant/accused and learned D.P.G for the State. In support of his arguments the learned counsel for applicant/accused has relied upon the case laws reported as **2013 YLR 913**.

3. Available record before this Court reveals that the applicant / accused was arrested on the spot, while possessing 1770 grams of Chars in the presence of two official witnesses. The plea of enmity raised by the accused's counsel regarding rivalry with the influential persons of the area could not be corroborated by the substantiated evidence at this stage, at least. Application of section 103 Cr.PC is specifically excluded as provided in Section 25 of the Control of Narcotic Substance Act, 1997. Having possession of more than 1 Kg of Narcotics do come within the prohibitory clause of Section 497 Cr.PC, as the offence is punishable with death or imprisonment for life. There seems, prima facie no plausible cause for falsely implication of the accused in present crime.

The case laws relied upon by the learned counsel for the accused, i.e. 2013 YLR 913 (Peshawar), 2018 YLR 993 (Peshawar), 2013 P.Cr.LJ 1160 (Peshawar), 2013 P.Cr.L.J 1162 (Sindh) and 2009 P.Cr.L.J 550 (Karachi) are quite distinguishable from the facts of the case in hand. Accordingly, I do not find any reasoning or rational to interfere with the order of learned trial Court, whereby he declined the bail of present applicant / accused. Order accordingly.

J U D G E

Faheem /PA

2. Concise facts of the prosecution story, as narrated in FIR, are that on 25.04.2018 complainant ASI Khadim Ali Shah of PS Gulshan-e-Maymar, Karachi was on patrol duty alongwith subordinate staff. During patrolling at about 0945 hours, when they reached at Katcha Road Graveyard Anwar Marri Goath, they saw two suspicious persons on a motorbike. On seeing the police party both the suspicious persons tried to escape. Police party chased them and finally apprehended them and finally police party succeeded to arrest one of the accused persons who was driving the motorbike, however, one sitting on pillion succeeded to escape by throwing a plastic shopper over there. The apprehended accused disclosed his name as Munir Ahmed S/o Saleh Muhammad, he also disclosed the name of escaping accused as Nazir Ahmed S/o Saleh Muhammad. Police conducted his search and recovered charas weighing about 1770 hours. Police also took search the plastic shopper, which was thrown by escaping accused and recovered charas weighing about 1240 grams. Hence present FIR.

3. Learned counsel for applicant/accused argued that the applicant is innocent and has been implicated falsely. He next contended that nothing has been recovered from the possession of applicant/accused and alleged has been foisted upon him. He also contended that there is no independent /corroborative evidence against the applicant/accused. That further contended that no independent witness has been associated by the police, which makes the prosecution case doubtful. He further contended that fact of the matter is that applicant/accused has dispute over property with his relatives, who are influential persons and have falsely implicated the applicant/accused in present crime in collusion with police. He lastly contested that there is a delay of about 24 hours in lodging the FIR as well as the co-accused has already been granted bail by this Court, as such the rule of consistency is application. He prayed that applicant/accused may be admitted on bail

4. Conversely, on the other hand, Ms. Seema Zaidi, learned D.P.G for the State vehemently opposed the bail application on the ground that the applicant/accused was arrested red handed on the spot and sizeable quantity of 1770 grams Charas has been recovered from his possession. She further argued that rule of consistency does not apply as the co-accused Nazir Ahmed was not arrested at the spot while his name was disclosed by the present accused at the time of his arrest. She raised legal plea that present offence falls within the ambit of prohibitory clause, therefore, applicant/accused is not entitled for bail. She prayed that present bail application may be rejected.