

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. B.A. No.S-963 of 2020

DATE

ORDER WITH SIGNATURE OF JUDGE

1. For orders on office objection.

2. For hearing of main case.

20.10.2020

Mr. Ghulam Shabbir Mari, Advocate for the applicant.

Ms. Sobia Bhatti, A.P.G, Sindh.

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ZULFIQAR AHMAD KHAN, J.-Through instant application, Applicant seeks

his admission on post-arrest bail in Crime No.85 of 2020, registered at Police Station Airport Shaheed Benazirabad, under section 9(C) Control of Narcotic Substances Act, 1997. Earlier bail plea preferred by the applicant was declined by means of order dated 16.09.2020, passed by learned Special Judge (Narcotic), Shaheed Benazirabad in B.A No.1578 of 2020.

2. As per prosecution case, on 06.09.2020 at 1600 hours complainant SIP Muhammad Arshad Rajput alongwith his subordinate staff reached at Village Faqir Muhammad Lakho and arrested the present applicant from under the Devi Trees and recovered 2200 grams of Chars from his possession. Thereafter, mashirnama of arrest and recovery was prepared and arrested accused and recovered property were brought at Police Station, where F.I.R. was registered on behalf of the State.

3. Learned counsel for Applicant submits that the Applicant is a student of 17 years of age; that he was taken away by police from his house and later on they demanded huge amount from him as an illegal gratification, which applicant being student failed to pay. The refusal of payment of said gratification by Applicant, complainant became annoyed and by taking summersault has foisted upon him alleged contraband items; that no independent / private person has been picked up to act as mashir of arrest and recovery; that no Chemical Examiner's report with regard to the contraband item allegedly recovered from the applicant has been received as

yet; He claims that case of the applicant does not fall within the prohibitory clause, hence he is entitled to be released on bail at this stage.

4. On other hand, learned A.P.G opposes the bail application.

5. Heard arguments and perused record.

6. It is settled law that at the bail stage deeper appreciation of evidence cannot be gone into and only it is to be seen as to whether applicant is prima facie connected with the commission of offence or not. It is an admitted position in view of material available on record that 2200 grams of charas was allegedly recovered from the applicant. Although the case is of advance information, but no private witness has been associated and there is no private person who signed the mashirnama of arrest and recovery. Prosecution has not claimed that the applicant has been previously involved in cases of similar nature. Significantly, the applicant is a student of 17 years of age and his entire career would be ruined if he is kept behind the bars for indefinite period when all PWs are police officials, as such there is no likelihood to tamper with the prosecution case if the applicant is released on bail. Further, challan of the case has been submitted, therefore, the applicant/accused is no more required for further investigation. The applicant has been continuously in custody since the date of his arrest and is no more required for any purpose of investigation. In these circumstances, the case of applicant is one of further inquiry as contemplated within the definition of section 497(2) Cr.P.C.

7. Moreover, no chemical examiner's report in respect of the narcotic substance allegedly recovered from the possession of applicant has been received as yet and hence, the said piece of evidence is yet to be determined by the trial Court. Non-production of chemical report by the prosecution presumption can be drawn no such recovery ever been effected from possession of the Applicant. It is well settled principle of law that every accused would be presumed to be blue-eyed boy of law until and unless he is found guilty of the charge. It is also settled principle of Superior Courts that law cannot be stretched upon in favour of prosecution, particularly, at bail stage.

8. In view of above, instant application is allowed. The applicant shall be released on bail subject to furnishing his solvent surety in the sum of Rs.25,000/- (rupees twenty five thousand only) and P.R Bond in the like amount to the satisfaction of the trial Court. However, the trial Court is directed to decide the case within shortest possible time.

9. Needless to mention that the observations made herein above are tentative in nature and would not prejudice the case of either party before the trial Court while deciding the case on merits.

JUDGE

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