

ORDER SHEET
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.**

Cr.Bail.Appl.No.S- 797 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGE
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14.10.2020.

Mr. Bilawal Ali Ghunio, Advocate for applicant.

Ms. Sana Memon, A.P.G. for the State.

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ORDER

ZULFIQAR AHMAD KHAN, J: Through instant bail application, applicant Hanif s/o Nek Muhammad seeks post arrest bail in Crime No.143/2020 registered at Police Station A-Section, Nawabshah for offence u/s 9(C) of CNS Act, 1997.

2. Precisely relevant facts are that on 15.07.2020 at 1930 hours complainant SIP Ali Gul Rind alongwith his subordinate left police station for patrolling purpose and after patrolling from different places when they reached at Musali Railway Crossing, complainant received spy information that present applicant is openly selling charas in Taj Colony, Nawabshah in front of his house. On receipt of such information they proceeded to the pointed place where at about 2030 hours, they saw the present applicant standing there having a black colour shopper in his hand, who on seeing the police party tried to slip away but was apprehended and during search recovery of Rs.500/- cash and 3000 grams charas was affected from his possession. The accused and case property were brought at Police Station. FIR was registered against the applicant. After usual investigation he was sent up for trial.

3. Learned counsel for the applicants *inter alia* contends that recovery affected from the applicant is 3000 grams charas; chemical report is delayed; no independent person has been cited as witness though the place of incident was a thickly populated area; applicant has no previous criminal record; investigation is completed; all the prosecution witnesses are police officials hence there is no question of tampering with the prosecution evidence. He lastly contended that

applicant is behind the bar since last about 03 months without any progress in the trial. In support of his contentions, learned counsel has place reliance on the cases reported as Saifullah v. The State (2020 YLR 151), Raheel Abbas v. The State (2018 P.Cr.L.J 1307) and Iftikhar Alam v. The State (2019 MLD 1870).

4. Learned A.P.G. opposed this application on the ground that this is a crime against society, however she concedes that there is no criminal history of applicant.

5. After careful consideration of contentions of learned counsel for the parties and meticulous examination of available record, alleged contraband narcotics is 3000 grams charas. No private witnesses have been associated to witness the recovery proceedings and the complainant party *least* could have made an attempt to associate *private* mashirs from the pointed place; there is a delay of about 14 days in sending the representative part for chemical examination which (*delay*) would also be required an explanation by prosecution hence making a room for further probe. Applicant has been in continuous custody since last about 03 months without any progress in the trial and is no more required for any purpose of investigation nor the prosecution has claimed any exceptional circumstance which could justify keeping the applicant behind the bars for an indefinite period. Moreover, prosecution has not claimed that the applicant is previously involved in same nature of the cases. All the prosecution witnesses are police officials hence there is no question of tampering with the evidence. Therefore, keeping *peculiar* facts of instant case; continuous detention of more than 03 months as well *minimum* punishment, which *normally* may be considered while dealing with bail plea, I am of the view that scale tilts in favour of the applicant for grant of bail as no *useful* purpose is likely to be served with further detention of applicant pending determination of his guilt.

06. Keeping in view the above given circumstances, *prima facie*, applicant has succeeded to bring his case within the purview of subsection 2 of section 497 Cr.P.C, for this reason, he is admitted to post arrest bail subject to his furnishing solvent surety in the sum of Rs.30,000/- (Rupees thirty thousand) and P.R Bond in the like amount to the satisfaction of trial Court.

JUDGE

Tufail