

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. B.A. No.S-860 of 2019

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DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection.
2. For orders on M.A-7108 of 2019 ((Exemption application).
2. For hearing of main case.

01.10.2019.

Mr. Akhtar Ali Abro Advocate for the Applicant.

Miss Safa Hisbani, A.P.G.

**ORDER**

**Zulfiqar Ali Sangi, J.**-Through instant application, the Applicant seeks post-arrest bail in Crime No.154 of 2019, registered at Police Station Qasimabad, under section 9(c) of Control of Narcotic Substances Act, 1997. Initially, bail plea preferred by the Applicant was declined by learned IIIrd Additional Sessions Judge / Special Judge CNS, Hyderabad vide order dated 22.08.2019.

2. The facts of the prosecution case are that on 02.08.2019, complainant ASI Ali Asghar Gopang of PS Qasimabad, along with his subordinate staff namely PC Nisar Ahmed PC Mumtaz Ali and PC Shahzad Arain boarding in government vehicle proceeded from police station at about 1600 hours, vide entry No. 19 for patrolling the jurisdiction. During patrolling different places, when reached at Naseem Nagar Chowk, where he received spy information that one female along with charas have alighted from bus at Bye Pass, and going towards Star Bungalows. Upon receiving such information, police party proceeded towards pointed place, where at 1700 hours, saw one person who had black shopper in hand and one woman, she also had one black shopper in her hand, police party stopped and alighted form government vehicle, where one accused seeing police party made his escape good by throwing shopper at the spot, however, lady accused was apprehended at the spot. Due to non availability of private mashir PC Nisar Ahmed and PC Mumtaz Ali were

nominated as mashirs and in their presence shopping bag which was thrown by male accused and shopper of lady accused were taken into custody and checked. Thrown shopper was found containing two big pieces of charas wrapped with plastic shopper on which monogram Year 2017 Dilpasand was written. Charas was weighed and became 1000 grams. On enquiry, lady accused disclosed her name as Mst. Mumtaz wife of Ali Muhammad Memon, R/o Sehrish Nagar Qasimabad, Hyderabad. The shopping bag secured from her possession was checked and found containing four big pieces of charas wrapped with white plastic shopper on which Dubai 2017 was printed. Charas was weighted and became 2000 grams, where lady accused disclosed that she sells charas for his livelihood. Recovered charas was sealed separately for chemical analyzer. Such memo of arrest and recovery was prepared at the spot in presence of above named mashirs. Thereafter, lady accused and case property were brought at PS, where present FIR was lodged against lady accused.

3. Learned counsel for Applicants, *inter alia*, submits that the Applicant is innocent and has been falsely involved in this case; that the Applicant is 60 years' old and infirm lady; that one son and one daughter of the Applicant are abnormal and she is lone who is caring them; that Applicant is first offender and is not a previous convict. Lastly, he prayed for grant of bail to Applicant.

4. Learned A.P.G. opposed the bail applications and has contended that Applicant is involved in heinous offence of narcotic; that the offence which Applicant had committed directly affect the society; that now a day ladies are used for trafficking the narcotic substances; that huge quantity of 02 kilograms of charas has been recovered from the Applicant; that the Chemical Examiner's report is in positive; therefore, she prays that bail plea of the Applicant may be rejected.

5. I have heard the parties counsel and perused the material available on record.

6. Perusal of F.I.R. shows that it was registered by ASI Ali Asghar of Police Station Qasimabad and he was the head of raiding party but despite

having prior information he did not inform his higher authorities and went for search and recovery, which act of such a police officer is in violation of section 21 of Control of Narcotic Substances Act, 1997 and this Court in case of **Imdad Ali Junejo v. The State** (2002 PCr.LJ 1086) had quashed the proceedings in the case of recovery of narcotic substance. Perusal of the copy of CNIC of Applicant available as annexure-“D” at page-45 of the Court file shows the date of birth of the Applicant as 01.01.1958; two certificates regarding the health of Ahsan Gul and Mehak, the son and daughter of the Applicant, are also placed on record by the counsel for the Applicant which reflects that both are ill, only the Applicant being their real mother may care / attend them.

7. Perusal of record reflects that on 03.08.2019 the case property was handed over to P.C Mohibullah for taking the same to Chemical Examiner, which is also cleared from road certificate available in police file. Chemical Examiner's report shows that the property was delivered in his office on 05.08.2019. In this case, PC Mohibullah who took the narcotic substance for chemical examination has not been examined during investigation to show about the safe custody of the said property that where it was lying during period i.e. 03 days. No doubt, the offence of trafficking the narcotic is a heinous one and affect the society at large but it is settled principle of law that each and every case is to be decided on its own facts and circumstances. Regarding the quantum of sentence in narcotic case as has been held in the case of **Ghulam Murtaza and another v. The State** (PLD 2009 Lahore 362) and punishment is provided for Charas exceeding one kilogram and up to two kilograms imprisonment of Rigorous Imprisonment for 04 years and 06 months and fine of Rs.20,000/- or in default Simple Imprisonment for 05 months, which does not fall within the prohibitory clause of section 497(2) Cr.P.C. The lady who conducted the search of the Applicant has also not been examined during investigation. In case of **Shazia v. The State** (2018 PCr.LJ 990) the Lahore High Court has granted bail to a female accused in case of recovery of 2400 grams of charas. Whereas in case of **Allah Ditta v. The State** (2005 PCr.LJ

568) the Division Bench of Lahore High Court has granted bail to the accused from whom 02 kilograms of Poppy Straw were recovered. It is well settled law that deeper appreciation of evidence is not permissible at bail stage and the only material will be assessed tentatively. While considering the facts and circumstances of the case tentatively, the Applicant has made out a good prima facie case for grant of bail.

8. Above are the reasons of short order dated 30.09.2019, whereby the captioned bail application was allowed and the Applicant was admitted to bail.

9. Needless to mention that the observation made hereinabove are tentative in nature and will not cause any prejudice to either party at trial.

JUDGE

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