

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

Cr. Bail Application No. S- 1379 of 2019

DATED	ORDER WITH SIGNATURE OF JUDGE
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For orders on office objection.
For hearing of main case.

17.01.2020

Mr. Ishrat Ali Lohar, Advocate for applicant.

Ms. Rameshan Oad, Asst. Prosecutor General.

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ABDUL MAALIK GADDI, J- Having remained unsuccessful in obtaining his release on bail from the trial Court in Crime No.61 of 2019 registered U/S 9(C) of CNS Act, 1997 at PS Khadro, now the applicant Ashique Hussain S/o Ghulam Nabi is seeking his release on bail in the said crime through this bail application.

2. The allegation against the applicant / accused is that he was apprehended by complainant from Pritamabad Shahpur Chakar road near Dargah Ibrahim Shah along with his sub-ordinate staff, it was 1230 noon and fulfilment all the required formalities the accused and case property were brought at police station hence, this F.I.R.

3. Learned counsel for the applicant / accused argued that the case against the applicant / accused is false, fabricated and based on malafide, as applicant / accused was not present at the alleged place of incident nor applicant has knowledge about the alleged incident and the alleged case property has been foisted upon applicant / accused; that according to contents of F.I.R, the police has separated small quantity from alleged recovered pieces of charas and then by mixing the same sealed in one parcel but it is settled law that sample of each piece should have been sent separately as it would be difficult to ascertain whether each pieces contained charas as held by this Court in 2013 YLR 786; that police has also violated the mandatory provision of section 103 Scr.P.C as police had an advance information and alleged place of incident is busy road, as such, case of applicant / accused has been challaned and he is in judicial custody and is no more required for further investigation, therefore, he prays for allowing the instant bail application.

4. Learned A.P.G has opposed this bail application on the ground that applicant / accused was arrested on the spot with 1870 grams

charas in presence of mashirs who have no inimical terms with the applicant and the sample parcels were returned with confirmation that the alleged property was charas. Besides, according to her the offence under which the applicant / accused is charged falls within the prohibitory clause of Section 497 Cr.P.C, therefore, the applicant / accused is not entitled for grant of bail.

5. I have heard the arguments of learned counsel for the parties and perused the material available on record. It appears from the record that case has already been challaned and applicant / accused is no more required for investigation. It is the case of spy information and the applicant / accused was arrested from Pritamabad Shahpur Chakar road near Dargah Ibrahim Shah, which according to the police papers is surrounded by shops and houses, but yet the police did not bother to join any independent person either from the place of information or from the place of incident to witness the event, therefore, on this ground alone false implication of the applicant / accused cannot be ruled out. It is also noted that four pieces of charas weighing 1870 grams were recovered from the possession of applicant out of which only 95 grams was sent for chemical examination and the whole property was not sent for chemical examination therefore, this aspect of the case also requires further probe whether the alleged charas has been recovered from the applicant / accused in a fashion as stated in the F.I.R or otherwise.

6. In view of the above, the applicant is admitted to post-arrest bail subject to his furnishing the solvent surety in the sum of Rs.50,000/- (Rupees Fifty thousand) and PR bond in the like amount to the satisfaction of the trial Court.

7. Needless to mention that the observations made hereinabove are tentative in nature and shall not prejudice the case of either party at the time of.

8. Before parting, I would like to make it clear that if the applicant misuses the concession of bail in any manner, then the trial Court is fully authorised to take every action against the applicant and his surety including cancellation of bail without making any reference to this Court. Office is directed to communicate this order to the trial Court for information and compliance.

JUDGE

****Fahad Memon****
17.01.2020