

**IN THE HIGH COURT OF SINDH AT
KARACHI**

Criminal Bail Application No.594/2017

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Applicant : Asif Khan, through Mr. Jamroz Khan Afridi, Advocates.

Respondent : The State, through Mr. Muntazir Mehdi, DPG

Date of hearing : 29.05.2017

Date of Order :

ORDER

YOUSUF ALI SAYEED, J. Following the dismissal of his initial bail application before the Special Court-I (Control of Narcotics Substance) Karachi, the Applicant has invoked the jurisdiction of this Court in terms of this subsequent Application under Section 497 Cr. P.C., whereby he seeks bail in relation to an alleged offence under S.9(c) of the Control of Narcotic Substances Act, 1997 (the "**CNS Act**"), which is the subject of FIR No.193/2016 registered on 04.07.2016 at P.S. Ittehad Town, Karachi (the "**FIR**").

2. The brief facts of the prosecution case, as set out in the FIR, are that on 09.01.2016, SIP Riasat Ali, who is the Complainant in this matter on behalf of the State, was on patrol along with other police personnel when at 0200 hours they came across the Applicant and one Taza Gul, who were on a motorcycle bereft of a license plate. It is said that the police party stopped the Applicant and his companion and their personal search yielded two packets of charas from the Applicant, cumulatively weighing 2000 gram, and one packet of charas from Taza Gul, weighing 1010 grams. It is said that the Applicant and co-accused were arrested on the spot and the recovered charas was also taken into possession and sealed separately.

3. Learned counsel for the Applicant submitted that the Applicant was innocent and had been falsely implicated. He pointed out that the co-accused, Taza Gul, had been granted bail by the learned trial Court on 19.04.2017, subsequent to the dismissal of the bail application of the Applicant. He contended that the case of the Applicant was on the same footing as that of the co-accused and that, as such, under the doctrine of consistency the Applicant also deserved the same concession. He submitted that, even otherwise, the matter was one that required further enquiry, in as much as there were no independent witnesses to the arrest and seizure.

4. The learned DPG strongly opposed the grant of bail to the Applicant and pointed out that the case of the Applicant was distinguishable on the point of the quantity recovered. He pointed out further that the absence of independent witnesses was not of particular consequence as the Applicability of S.103 Cr. P.C. had been excluded in cases under the CNS Act, and in that regard placed reliance on the judgment of the Honourable Supreme Court reported as *Zafar v. The State* 2008 SCMR 1254. He further submitted that all the prosecution witnesses had implicated both the accused in their statements under S. 161 Cr. P.C., and that the report of the Chemical Examiner in the matter was also in the affirmative. He further submitted that the offence under the Narcotics Act is heinous one and considered as an offence against society at large, which falls within the prohibitory clause of S.497(1) Cr. P.C.

5. Having considered the matter, I am of the view that no fit case for grant of bail has been made out. The plea of false implication is one that falls to be determined during the course of the trial. For the purposes of the tentative assessment to be made at this stage, it is sufficient to note that a significant quantity of charas has been recovered. The rule of consistency would also not be applicable, as the case of the co-accused is distinguishable from that of the Applicant as the reason which prevailed with the learned trial Court in granting the co-accused bail was that in view of the quantity of charas said to have been recovered from his possession, his case fell on the cusp of 9(b) and 9(c), whereas the case of the Applicant quite clearly falls within the latter provision, which brings the matter within the prohibitory clause of S.497 Cr. P.C. The Judgment of a learned single Judge of this Court reported as *Muhammad Ishaque v. The State/ANF PS Hyderabad* 2012 P Cr. L J 402 is a case in point.

6. Furthermore, as held by the Honourable Supreme Court in the case reported as Socha Gul v. The State 2015 SCMR 1077, offences punishable under CNS Act are by their nature heinous and considered to be offences against the society at large, and it is for this reason that in terms of S. 51 of the aforementioned statute a note of caution has been recorded against enlarging of an accused person on bail in the ordinary course. Additionally, it was also held by the Apex Court in the aforementioned precedent that the ratio of the judgment of the Lahore High Court in the case reported as Ghulam Murtaza v. The State is not relevant at the bail stage.
7. However, since it appears that the Applicant has been in custody since 04.07.2016, under such circumstances the learned trial Court is directed to proceed with the case expeditiously and preferably dispose of the same within a period of forty-five (45) days from the date of receipt of this Order under intimation to this Court through MIT-II.
8. Needless to say, the observations made above are tentative in nature and should not to be read so as to influence the trial Court in its determination of case in any manner whatsoever.
9. Application stands dismissed with directions as above mentioned.

JUDGE