

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1699/2016

Applicant : Muhammad Arshad, through Mr. Mahmoodul Hassan and Mrs. Aneela Sehar, Advocates.

Respondent : The State, through Mr. Ali Hyder Saleem, APG

Date of hearing and Order : 08.05.2017

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, which is the subject of FIR No.5/2016 registered on 09.01.2016 at P.S. Sher Shah, Karachi (the “**FIR**”).

2. The brief facts of the prosecution case, as set out in the FIR, are that on 09.01.2016, SIP Naseer Muhammad Magsi, who is the Complainant in this matter on behalf of the State, was on patrol along with other police personnel when they received information that two persons were to be found going towards Shershah with a huge quantity of charas. It is said that on that basis the police party proceeded to Shershah and upon reaching there at 0145 hours, came across and stopped two persons who had plastic bags on their shoulders, namely the Applicant and one Habibullah, son of Muhammad Amin Jalandar.
3. As per the FIR, the bag being carried by the said persons were checked and as a consequence of such search 20 packets of Charas weighing 19 K.G was said to have been recovered from the possession of the Applicant, whereas 17 packet of Charas weighing 16 Kg were recovered from the possession of Habibullah. The Applicant and co-accused were arrested on the spot and the recovered Charas was also taken into possession and sealed separately.

4. Learned counsel for the Applicant contended that the Applicant was innocent and had been falsely implicated due to enmity between them and the Complainant, and pointed to an Application dated 01.01.2016 said to have been lodged by the Applicant before the DIG Police West Karachi, against the Complainant and others. He submitted that on this basis the matter was one that required further enquiry, especially as there were no independent witnesses to the arrest and seizure.
5. It was also contended that the co-accused namely Habibullah has been granted bail by this Court under Section 497 Cr.P.C in Criminal Bail Application No.612/2016, and that bail ought to therefore be granted to the Applicant under the in the instant case the Applicant/accused may be awarded rule of consistency.
6. The learned APG has strongly opposed the grant of bail, and has pointed out that the Applicant along with co-accused Habibullah were caught red-handed, in possession of large quantities of narcotics, and that the P.Ws in their 161 Cr. P.C. statement have supported the prosecution case and implicated the accused for the commission of offence. He submitted that the report of the Chemical Examiner is positive. Thus, sufficient material is available with the prosecution to connect the Applicant to the commission of offence. 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.
7. 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 large quantity of charas has been recovered, the chemical analysis of which is in the affirmative. The rule of consistency is also not applicable in this case as the case of Habibullah is clearly distinguishable on the basis that he was found to be minor, which appears to have been the principal factor borne in mind for the purpose of granting him bail. As to the matter of there not being any private witnesses to the seizure/recovery, as correctly noted by the learned trial court, the application of S-103 Cr. P.C to narcotics cases has been excluded and non-inclusion of any private witness is not a serious defect, as held in the by the Honourable Supreme Court in the case reported as *Zafar v. The State* 2008 SCMR 1254.

8. Needless to say, the observations made above are tentative in nature and should not be read so as to influence the trial Court in its determination of the main case in any manner whatsoever.
9. Application stands dismissed accordingly.

JUDGE