

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI,
Cr.Bail.Appl.No.12 of 2018.

DATE ORDER WITH SIGNATURE OF JUDGE

For hearing of bail application.

07.05.2018.

Mr. Zakir Hussain Bughio, Advocate for Applicant.
Ms. Abida Perveen Channar, Special Prosecutor ANF.

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Through instant bail application, applicant Muhammad Yousuf s/o Bashir Ahmed seeks post arrest bail in Crime No.DO30701816 of 2016, registered at Police Station ANF, Muhammad Ali Society for offence u/s 6/9-C, 14-15 C.N.S. Act, 1997.

2. Precisely, relevant facts of the case are that on receiving a tip, Anti Narcotics team apprehended two persons who were riding on motorcycle bearing No. KIU-7612 and recovered 25 K.g. charas; 10 grams from each slab, being representative part, was separately sealed and sent to chemical examination, such report is in positive and case is pending for adjudication.

3. At the outset, learned counsel for the applicant contends that alleged recovery is doubtful, as it is difficult to fix the joint liability on any accused, whereas specific recovery from the possession of applicant is only 1 KG. He also emphasized over an entry No.7 with regard to a quarrel between co-accused and other private persons and contends that if co-accused was present at the place of quarrel, how alleged recovery can be effected from the different place in a company with applicant.

4. Learned Special Prosecutor ANF contends that instant offence is against the society; offence falls within the prohibited clause; applicant was

riding the motorcycle, hence, both the accused persons with common intention committed such offence; in case recovery is bifurcated in two parts even then offence is punishable for life, hence, applicant is not entitled for concession of bail. She relied upon a case law reported as 2016 SCMR 1447.

5. Perusal of prosecution case, it appears that allegedly applicant and co-accused were apprehended with the huge quantity of charsas while they (applicant and co-accused) were on one and same motorcycle. The alleged recovery is **25 K.Gs** which cannot be believed to have not been noticed by applicant/accused when he (applicant /accused) agreed to ride the bike for carrying such *huge* quantity towards its destination. I would say that if recovery is affected from a concealed part of a vehicle, the plea of conscious possession (knowingly) or *otherwise* would be available requiring the prosecution to prove the same thereby allowing the accused to take the same as one of the grounds to make out a case of further probe because same *normally* involves number of questions such as *ownership* and *control* etc. However, where the recovery *prima facie* suggests otherwise then the *presumption* would be otherwise. In such eventuality, I would say, accused would be required to show existence of other strong circumstances making a *prima facie* case of **further inquiry** like animosity etc and merely on of *joint-recovery* he would not be entitled for bail, particularly where it involves a *huge* quantity. The question of *alibi* though is agitated by learned counsel for the applicant but with regard to co-accused which, if accepted for understanding, would result in leaving the present applicant / accused with such *huge* recovery; further principle of *falsus in uno falsus in omnibus*

cannot be pressed at bail stage because same shall always require deep dive which, I am safe in saying, is not permissible. Accordingly, I find no substance in such *plea* of applicant / accused. The applicant / accused has not been able to bring any thing on record which could open a room of possibility of false involvement by foisting such *huge* quantity. It further reveals that applicant was serving in police department from where he absconded and thereafter, he was terminated from police department and now he is *allegedly* involved in drug paddling with drugs mafia. Alleged offence falls within category of *offence against society*; involves huge quantity of *Charas*; prima facie absence of *animosity* are circumstances which link the applicant / accused with the offence, entailing capital punishment.

Accordingly, in view of above said case law relied upon by the learned Special Prosecutor ANF, applicant has failed to make out his case within the scope of further inquiry, hence, he is not entitled for bail. However, with regard to statutory ground he would be at liberty to approach the trial court, if such ground is available with him.

In view of the above, instant criminal bail application stands dismissed.

JUDGE

Sajid