

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. B.A. No. S- 333 of 2020

DATE

ORDER WITH SIGNATURE OF JUDGE

Applicant: Hussan son of Arshad by caste Rajput, through Mr. Muhammad Amir Qureshi advocate for applicant

Respondent: The State through Ms. Safa Hisbani, A.P.G.

Date of hearing: 13.07.2020

Date of Order: 13.07.2020

ORDER

Through this application, applicant seeks post arrest bail in Crime No.20 of 2020 of police station City, Hyderabad under section 9(c) CNS Act, 1997.

2. Applicant approached the Trial Court for bail but his bail plea was turned down vide order dated 03.04.2020.

3. Briefly stated the case of prosecution is that on 02.03.2020 a police party of police station City, Hyderabad led by ASI Arshad Ali on information that one person of young age is selling charas near dargah Nagc Shah at Bhai Khan Incline, Hyderabad reached there and arrested him, who disclosed his name as Hassan son of Arshad Rajput (applicant). It is further averred that said police recovered from his possession 45 pieces of charas weighing all 2010 grams, hence this FIR.

4. Per learned counsel the applicant is innocent and has nothing to do with the alleged offence; contraband charas has been foisted upon the applicant by the police in order to show their so called efficiency; the sample was sent to chemical examiner with plausible delay without any plausible explanation; the case of applicant is of border line and it is yet to be determined whether the case would fall under section 9(b) or 9(c) of CNS Act, 1997; that as per mashirnama and FIR shows that the police had spy information but despite of such facts

persons from the locality were not associated to act as mashir neither any dummy purchaser has been sent by the police party; that there is enmity as there is also a 1st class suit No.119 of 2016 pending before the Court having jurisdiction between uncle of present applicant and SHO Tahir Hussain Mughal hence, applicant has been involved by the complainant party in this crime at the instance of SHO Tahir Mughal. Lastly prayed for grant of bail.

5. On the other hand learned A.P.G. vehemently opposed the bail plea of the applicant stating that this is a heinous offence which is against society, therefore, he does not deserve the concession of bail.

6. Heard learned counsel for the parties and perused the record.

7. I have given my anxious thought to the contentions raised at bar and have gone through the police papers so made available before me. The plain reading of FIR it appears that on the relevant date and time complainant received spy information in advance regarding selling of charas by the applicant/accused but despite of fact that the incident took place at thickly populated area viz. near Dargah Nagc Shah at Bhai Khan Incline, Hyderabad he failed to associate any private person to act as a witness to the event, hence the whole episode creates highly doubt in the prosecution case and requires probe. Further, the incident took place on 02.03.2020 and since then the trial Court has not received the chemical examiner report, hence no progress has been made before the learned trial Court. The trial is yet to be concluded, apparently the same would take time and the witnesses are police personal as such, prima facie, there is no possibility of tempering of the prosecution evidence. It is settled law that law is not to be stretched in favour of the prosecution and benefit of doubt arising out of the prosecution case is to be exercised in favour of the accused. Reliance is place in a case of **Muhammad Mizan vs the State reported in 1997 MLD Karachi 279**. Furthermore, as per police papers accused is juvenile aged about 17 years and nothing has been brought on record to show that the applicant is a previous

convict or has been arrested in a case of similar nature in past. It is settled position of law that at the bail stage deeper appreciation is not required and only it is to be seen as to whether applicant is prima facie connect with the commission of the offence or not, hence tentatively on the ground as stated above the applicant has been able to make out a case of further inquiry into his guilt. Besides, the case has been challaned. Applicant is no more required for investigation. Consequently, I allow this application and admit the applicant on bail subject to furnishing surety in the sum of Rs. 1,00,000/- and PR bond in the like amount to the satisfaction of Trial Court. The observations made in this order are tentative in nature and will not prejudice the case of either party.

JUDGE

Ahmed/Pa,