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**IN THE HIGH COURT OF SINDH, AT CIRCUIT COURT  
LARKANA**

**Crl. B.A.No.D- 25 of 2017**

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.
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For Hearing.

Present:

**Mr. Justice Muhammad Junaid Ghaffar &  
Mr. Justice Khadim Hussain Tunio.**

Mr. Aqeel Ahmed Bhutto Advocate for Applicant.

Mr. Khadim Hussain Khooharo Additional Prosecutor General.

Date of Hearing: 23-08-2017

Date of Order: 23-08-2017

**ORDER**

**Muhammad Junaid Ghaffar, J:** Through this bail application, applicant Javed Ahmed seeks post arrest bail in special case No. 25 of 2017, pending before the Court of Anti-Terrorism Judge, Larkana arising out of crime No.05 of 2017 registered with P.S. (CTD) for offence under sections 11-F(6) of ATA, 1997. Bail application of the applicant has been dismissed by the learned trial Court vide order dated 20.07.2017.

2. We have heard learned Counsel for the applicant as well as learned Additional P.G and our observations are as under:

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(a) It is the case of the prosecution that on 25.5.2017 at 1500 hours on spy information the applicant was arrested for being involved in collection of Chanda / donation for proscribed organization at Food Godown near Amroti Masjid having a booklet for donation in his hand. On being apprehended he himself informed that he is the member of banned organization and used to help terrorist. It is further stated that on search an amount of Rs.100/- and two mobile phones (Q-Mobile / Motorola) having four sims in both mobiles as well as one ball pen of blue color was recovered. However, neither any model number of mobile phones nor EMEI No. has been stated, creating doubt in the prosecution story. Whereas, all the witnesses are police officials, notwithstanding the fact that they had spy information, and the applicant was arrested at 1500 Hours (daylight) near a mosque. Moreover, no money allegedly collected as donation has been recovered. In our opinion the story so stated is not convincing enough to deny exercise of discretion in favor of the applicant for grant of bail.

(b). It has further come on record that one ASI Muhammad Khan Brohi of CTD Police (who have registered this case) resides in Shikarpur and is a tenant of one shop owned by the applicant along with his partner, and upon a dispute on 23.5.2017 he had lodged N.C. report at P.S. Lakhi Dar and may be this is a counter blast to such lodging of report. In our view since no assistance has been provided regarding the case lodged by the applicant, his case is of further inquiry considering the material placed before us.

(c). Though in cases of such nature, and considering the magnitude and effect of terrorism related activities by the proscribed organizations, extra care has to be taken, but this should not in any manner distract the Court from ensuring complete justice in a given case. On a tentative assessment as already discussed we are of the view that the investigation in this case is not satisfactory and is flawed and not free from ambiguities. Moreover, under Section 11-F(6) of the ATA, 1997, the minimum punishment is 1 year, whereas, the maximum punishment is 5 years, and the case does not fall within the prohibitory clause. The Honorable Supreme

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Court in the case of **Muhammad Noman v The State** in Criminal Petition NO 1188/2016 vide order dated 12.1.2017 while dealing with a case registered by CTD department of Bahawalpur Police, under sections 7 & 9 ATA, read with S.4 of Explosive Act and S.13-2(A)/20 of Arms Ordinance 1965 against accused for having involved in militant activities on behalf of a proscribed organization, while granting Bail has been pleased to observe that;

6. While dealing with the liberty of the citizen at bail stage or otherwise, the Courts are required to take extra degree of care and caution so that actual terrorists/militants, challenging the writ of the State, may not go scot free, nor innocent citizens are grilled and put behind the bars, painting him/them as terrorists or belonging to militant gangs/groups because, in the present situation prevailing throughout the country, chances could not be ruled out of false implication of innocent citizens for ulterior motive, in some rare cases.

7. It is essential and obligatory duty of the superior police officers of the rank of SP, SSP and above that, when the accused make such allegations, supported by record of the Police itself, they have to take charge of the investigation and to dig out the truth because it is the duty of the Police as a whole, irrespective of rank and file to bring the correct and true facts/materials before the Court of Law so that the actual criminals are punished, sans innocent citizens.

(d). Though the trial Court while dismissing the bail application of the applicant has also taken into consideration the report of police regarding the antecedents of the applicant and the fact that SSP Shikarpur has recommended his name for inclusion name in the 4<sup>th</sup> Schedule to the ATA, 1997; however, on perusal of such recommendation it transpires that the SSP has himself reported that *he got training in Afghanistan, was involved in terrorism activities and was supporting / facilitating the terrorist (undercover)*, but at the same time it is also reported that there is no criminal record of the applicant. This itself is contradictory and can be easily and conveniently discarded at this stage of bail and cannot be made basis for refusal of bail to the applicant as his case squarely falls within the ambit of sub-section (2) of Section 497 Cr.P.C.being susceptible to further inquiry. This resultantly entitles the applicant entitled for grant of bail as a matter of right and not as a matter of grace.

J

4. In view of hereinabove facts and circumstances of the case on 23.8.2017 by means of a short order the applicant was admitted to post arrest bail in the aforesaid crime on his furnishing surety in the sum of Rs. 50,000/- with P.R. bond in the like amount to the satisfaction of the trial Court and these are the reasons thereof.

*Signature*  
JUDGE  
29.8.17

*Signature*  
29.8.17  
JUDGE