

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

Bail Applications No. **S-187** of **2017**

APPLICANT : Muhammad Laiq alias Suhno  
s/o Dodo Khan, through  
Mr. Ashfaq Hussain Abro, Advocate

RESPONDENT : The State,  
through Mr. Sardar Ali Shah, A.P.G.

Date of Hearing : 12.06.2017  
Date of Order : 12.06.2017

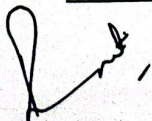
**ORDER**

**ZAFAR AHMED RAJPUT, J.-** Through instant Criminal Bail Application, under Section 497 of Cr. P.C., the applicant/accused, namely, Muhammad Laiq alias Suhno s/o Dodo Khan seeks post-arrest bail in case F.I.R No.04 of 2017, registered under Section 9 (c) of the Control of Narcotic Substances Act, 1997 (hereinafter "**the Act**") at Police Station Rehmatpur, Distt. Larkana. His earlier application for grant of bail being No. 290 of 2017 was rejected by the learned Special Judge C.N.S. Act, Larkana, vide order dated 18.03.2017.

2. Briefly stated facts of the case are that on 18.01.2017, upon receiving spy information during patrolling that the applicant/accused was going from Chandka Bridge to Bazigar Bridge hauling Charas, the complainant S.I.P. Ali Bashir Jagirani of C.I.A., Larkana, along with subordinate staff, reached the pointed place at 1700 hrs., and arrested the accused on being found in possession of three packets of Charas in black polythene bag, which was on being equalized came to three K.Gs., the same was sealed by him at

the spot, thereafter, he brought the accused along with case property at police station Rehmatpur where aforesaid F.I.R. was recorded.

3. Learned counsel for the applicant/accused has contended that the accused is innocent and has falsely been implicated in this case by the C.I.A. police, who arrested the accused from Nazar Muhallah two days before lodging of the F.I.R.; that despite advance information, the complainant did not associate any private mashir, which has rendered the alleged recovery doubtful; that as per F.I.R, C.I.A. police recovered three packets of Charas, while the report of chemical analyzer shows that each packet contained two slabs, but the number of slabs have neither been mentioned in the F.I.R. nor even in the memo of recovery, hence no credibility can be attached to alleged recovery; that there is delay of five days in sending the case property to chemical analyzer and no explanation for such delay has been furnished by the prosecution; that as per Ghulam Murtaza's case (PLD 2009 Lahore 362) the alleged offence is punishable for five years and six month, as such, the alleged offence does not fall within the prohibitory clause of Section 497 Cr. P.C., hence, the accused is entitled to the concession of bail. In support of his contentions, the learned counsel for the accused has relied upon the case of *Ikramullah and Others v. The State* (2015 SCMR 1002) *Waheed Raza Pathan v. The State* (2011 YLR 2760) *Maqsood Zaman v. The State* (2011 YLR 2335) *Muhammad Mudasir v. The State* (2010 YLR 2910).



4. Conversely, the learned A.P.G has vehemently opposed the grant of bail to accused on the grounds that a huge quantity of Charas has been recovered from the possession of accused; that the alleged recovery has been effected from the accused in presence of two official witnesses against whom no ill-will or enmity has been pleaded by the accused; that as per F.I.R. due to non-availability of the private persons at the spot, the C.I.A officials acted as mashirs; that Ghulam Murtaza's case has no application at the bail stage and it is the trial Court that shall decide the quantum of punishment after trial of the accused.

5. Heard the learned counsel for the accused as well as A.P.G. for the State and perused the material available on record with their assistance so also the case-law cited by the learned counsel for the accused.

6. It appears prime facie that three K.Gs. Charas has been recovered from the accused, who is facing charge under Section 9 (c) of the Act. The punishment provided under clause (c) of section 9 of the Act for possessing, narcotic drug, psychotropic substance or controlled substance, exceeds from 1 kilogram, is either for death, imprisonment for life or for a term which may extend to fourteen years with fine, which may be up to one million rupees. The entire Charas was sent to chemical examiner for analysis and his report in this regard is positive.

7. While considering the submissions made by the learned counsel for the accused, I have tentatively found that the accused was arrested by C.I.A. police but the investigation was conducted

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by S.I.P Imdad Ali of P.S. Rehmatpur against whom no enmity has been alleged by the accused. It has been mentioned in the F.I.R. that due to non-availability of private person, the C.I.A. official were made mashirs of recovery. Even otherwise association of any private mashir is not the requirement of the Act in view of Section 25 of the Act, which has excluded the applicability of Section 103 Cr. P.C. in narcotics<sup>7</sup>cases. Reliance in this regard may be placed on the case of Zafar v. The Sate (2008 SCMR 1254). Non-mentioning of the number of slabs in the F.I.R. and memo of recovery is also not fatal to the persecution case when the number of packets has been mentioned. I am also not convinced of the arguments of learned counsel for the accused with regard to delay in sending the case property to chemical analyzer, for the reasons that the alleged recovery was affected from the accused on 18.01.2017 and the case property was deposited with the office of chemical analyzer on 23.01.2017, which was day of Monday and since the office of chemical analyzer's remained closed on Sunday, it was deposited on fifth day. Even otherwise, delay of few days in sending the case property to chemical analyzer is of no consequence for the reasons that Rule 4 of Control of Narcotics Substance (Government Analysis) Rules 2001, which prescribes 72 hours for sending the contraband articles to Chemical Analyzer, is directory and not mandatory.

8. As regard the sentencing policy, formulated by the full bench of Honorable Lahore High Court in the case of Ghulam Murtaza (supra), I am in agreement with the learned APG that the same has no application on the case of the accused at the bail stage, as held

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by the Honorable Supreme Court of Pakistan in the case of Socha Gul vs. The State (2015 SCMR 1077).

9. So far the case-law cited by the learned counsel for the accused is concerned; I am of the humble view that the same are not applicable in the case of present accused being on distinguishable facts. I am; therefore, of the view that, prima facie, sufficient material is available on record to connect the accused with the commission of alleged offence and no case for granting bail to accused has been made out. Hence, instant bail application is dismissed, accordingly.

10. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicant / accused on merits.



JUDGE