

Date

Order with Signature of Judge

1. For Order on office Obj. A
2. For Hearing of Bail application

Notice issued to D.P.G.

09¹⁰/₂₀₁₇. On 02/93 Ahmed Raza Khan
for govt. int.
M. Karam Hussain Khushroo P.C.
" " " " " "

For the reasons to be recorded
before on application/answer of M. Karam
Raza Khan is ordered to post bail
subject to his furnishing solvent
surety in the sum of Rs. 50,000/-
(Fifty thousand only) with P.R. bond in
the like amount to the satisfaction of
Jr. Ct.

Judge.

1026

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, LARKANA
Cr.Bail Appl.No.S- 478 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection.
2. For hearing of Bail Application.

09.10.2017

Mr. Aijaz Ahmed Bhatti, Advocate for the Applicant.
Mr. Khadim Hussain Khooharo Addl. Prosecutor General.
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Muhammad Junaid Ghaffar, I: Through this Bail application, the applicant/accused seeks post arrest bail in crime No.09/2017 registered at Police Station Darri, under Section 9(c) of the Control of Narcotics Substance Act 1997, as the trial Court has dismissed the bail application of the applicant/accused vide order dated 05.08.2017. This was the second bail application of the applicant / accused as earlier his bail application was also dismissed by the trial Court vide order dated 7.2.2017. The ground for filing the second bail application was an inquiry report conducted in this matter on the directions of a learned Division Bench of this Court. The case has been registered on account of an alleged recovery of 8 Kgs. of Charas from his possession.

2. I have heard the learned Counsel for the applicant/accused and learned APG and my observations are as follows:-

- i) The Applicant is a Forest Officer, and the case so pleaded by the learned Counsel for the applicant/accused is that he has been falsely implicated in this case as he had taken a task of removing the encroachments and unauthorized raising of construction of houses on the land of the Forest Department. According to him this exercise was also carried out on

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certain directions of the Court from time to time. This according to the learned Counsel has infuriated the Land Mafia / highly influential Persons having Political backing who being hands in gloves with the Police Authorities have falsely implicated the applicant / accused.

- ii) The contention to that effect seems to be admitted and in fact in one of the petitions bearing No.D-228 of 2016 vide order dated 2.11.2016, after an inspection by the Commissioner appointed by the Court, certain directions were issued to remove the encroachments made on the Forest Land illegally by the encroachers and if in the course any assistance is required it shall be provided by the concerned authorities. Such order has been placed on record. Thereafter compliance report has been placed on record by Mukhtiarkar Taluka Garhi Yasin that all the concrete structures were destroyed and the most renowned building such as "White House and Green House" were also dismantled.
- iii) It further appears that an attempt was also made to implicate the Applicant in another FIR by filing of an application under Section 22 A&B Cr.P.C. before the Session Judge / Justice of Peace, by a private person; however, the said application was disposed of vide order dated 9.1.2017 on the ground that the case regarding Forest Land is pending before the High Court. Thereafter a Criminal Misc. Application No.03/2017 was filed before this Court which was also dismissed vide order dated 3.4.2017 with the observations that in cases wherein action is taken against encroachers of Forest Land, frivolous criminal cases are attempted to be filed against the Forest Officers to usurp the said land for which the encroachers have no lawful authority to retain possession.
- iv) It further appears that after Registration of instant FIR the brother of the Applicant approached this Court

through CP. No.D-138 of 2017 for conducting an impartial and fair inquiry through any honest Police Officer, as according to him his brother was falsely implicated in the case to teach him a lesson and to take revenge. A learned Division Bench of this Court vide order dated 22.06.2017 disposed of the said petition by appointing Inspector Abdul Qudoos Kalwar to conduct an inquiry into the matter and submit his report within three weeks before the Trial Court and also to file a compliance report before this Court. It is to be appreciated that the learned Division Bench while passing the order for a fresh and independent inquiry was also mindful of the fact that in the past, one case registered against the brother of the Applicant under the Sindh Arms Act was found bogus, whereas, the applicant was assigned the task of taking action against the encroachers as such encroachment was on the record of the Court through the report of its own Commissioner.

- v) The inquiry was completed by the said inspector and in his report dated 12.7.2017 he has come to the conclusion that upon impartial inquiry on oath it has come on record that accused Gada Hussain Bhatti was instrumental in executing the orders of the Court and played a vital role for removing illegal possession from forest departments land and this infuriated the encroachers who in connivance of Police Officials managed to arrest the Applicant on 20.1.2017 and illegally confined him for 4 days in lock-up of PS Market Larkana and on 24.1.2017 handed him over to CIA Larkana and a fake and false case was registered against him vide crime No.09/2017.
- vi) It is regretted that even after such inquiry report being conducted on the directions of a Division Bench of this Court, the learned Trial Court has not appreciated the said inquiry report and has rather discarded the same in

slipshod manner by observing that huge recovery of charas was duly witnessed by police officials whose credibility would be determined after recording their evidence. Mere on the findings of enquiry officer, it could not be said at this stage that case of applicant is one of further enquiry as deeper appreciation of evidence is not permissible at the bail stage. This finding of the learned Trial Court, I may regrettably observe is not based on correct appreciation of facts or law and by any iota of imagination cannot be accepted or sustained. There is one version of police officials who have registered the case against whom it has been consistently alleged that they have falsely implicated the applicant. There is another version through an inquiry conducted on the directions of this Court which categorically says that a false case has been registered. Then I fail to understand as what better case of further inquiry is made out in the circumstances. Out of the two versions, if for any reason, the version of inquiry officer is not acceptable, even then at least at bail stage it is a fit case of further inquiry into the guilt of the applicant who is behind bars for the last 8 month for having performed his duties with vigilance and honesty.

- vii) The Hon'ble Supreme Court in the case of *Zaigham Ashraf v The State* (2016 SCMR 18) while following the earlier guidelines settled by the Court in the case of *Amir v. The State* (PLD 1972 SC 277) and *Manzoor v. The State* (PLD 1972 SC 81) has been pleased to hold that the Court was not required to see and consider the material / evidence collected in favor of prosecution only but also had to give proper attention to defence plea taken by the accused and if only a reasonable doubt is created, concession of bail must not be withheld. It has been further observed that the Court must apply its judicial mind with deep thought for reaching a fair and proper conclusion albeit tentatively and must not be carried out in a casual or flimsy manner so as to curtail the liberty of a person as it was a serious step in law, whereas, in the

absence of any reasonable ground or reason, denial of bail in such a case would amount to exercise a discretion not warranted by law and principles of Justice.

- viii) Moreover, it has come on record that applicant was kept in unlawful custody from 20.01.2017 to 24.1.2017 and thereafter the case of alleged recovery of charas was registered, whereas the samples for testing were sent after a period of 7 days for which there is no explanation, whereas, the samples were sent to a laboratory at Karachi instead of a nearby laboratory, again for no plausible reason on record.
- ix) In my view the facts of this case, independently and of itself make out a case of further inquiry and of grant of bail, even in absence of any independent inquiry by the Court.
- x) A learned Division Bench of this Court in the case of *Ghulam Mustafa v The State* (2007 P.Cr.LJ 139) as relied upon by the learned Counsel for the Applicant (this was also a case of Narcotics Act), has come down heavily on the conduct of Police officials, false implication as well as credibility of subsequent inquiry reports and its admissibility. The Court has observed that conduct of our police has never been people friendly. And Trial of a criminal case being both jeopardy as well as ordeal, requires utmost care and nobody should be subjected to it without collecting sufficient evidence against him. It would be advantageous to refer to the relevant finding of the Court regarding a subsequent inquiry and its validity at the time of deciding a bail application, which reads as under;

6. The trial Court turned down the subsequent report of the Deputy Superintendent of Police on the ground that after the conduct of an investigation by or under the authority of an Officer-in-charge of a police station, there was no provision in the Code for the conduct of any further investigation or enquiry by any superior Police Officer. The view taken by the trial Court is not correct. There is no end of investigation. It can continue even after the execution of sentence,

otherwise it will not be possible to punish a perjurer under the second part of section 194 of the Pakistan Penal Code, 1860, on the basis of whose evidence some innocent person may have been executed. As regards powers of superior Officers of Police, they, by virtue of section 551 of the Code, enjoy all the powers of an Officer-in-charge, of a police station throughout the local area to which they are appointed.

It is true that the Court was not bound by the subsequent report of investigation. It was not bound by the first one either. But it does not mean that the reports were not to be taken into consideration at all. Indeed, before the record of evidence, the material available before a Court is mainly that which is collected by the Investigating Agency. The subsequent reports of investigation are to be looked and taken into consideration in the same way as are the first ones.

- xi) Even otherwise it is settled law that once a case of further inquiry is made out and there exists reasonable grounds, then bail must not be withheld as punishment. [See *Gul Zaman v The State* (1999 SCMR 1271) & *Abid Ali v The State* (2011 SCMR 161)], whereas, in such situations grant of bail is a right of an accused and not a concession.
- xii) Nonetheless the learned APG has also conceded to the concession of bail on the basis of independent inquiry conducted on the directions of this Court, as well as for the reason that sample was sent for testing belatedly and that too at a laboratory at Karachi without there being any plausible justification or explanation.

4. In view of hereinabove facts and circumstances of this, I am of the view that the applicant/accused has made out a case of further inquiry into his guilt and is therefore entitled for the confession of bail. Accordingly by means of a short order in the earlier part of the day the applicant / accused was admitted to bail on his furnishing surety in the sum of Rs.50,000/- (Fifty Thousand Only) and P.R. Bond in the like amount to the satisfaction of the Trial Court and these are the reasons thereof.


JUDGE
9.10.17