

ORDER SHEET
**IN THE HIGH COURT OF SINDH, CIRCUIT
COURT, HYDERABAD.**

Cr. Bail A. No.S-893 of 2015.

Date of hearing & decision: 15-09-2015.

Mr. Agha Waqar Ahmed, Advocate for the applicant.

Mr. Amjad Ali Sahito, Special Prosecutor ANF.

NAZAR AKBAR, J: - Through the instant application, applicant Muqadar Ali seeks post-arrest bail in Crime No.04/2015, registered with Police Station ANF Hyderabad, under sections 6, 9 (c) CNS Act, 1997.

2. Briefly, the facts of the prosecution case are that, on 16.01.2015 at 1500 hours, upon receiving spy information the complainant SIP Sayed Salman of Police Station ANF Hyderabad alongwith his subordinate police personnel reached at Sheedi Mohalla Husri and apprehended the accused/applicant and secured 1600 grams of Charas from his possession. Thereafter, the recovered narcotic and the arrested accused were brought at Police Station where FIR was registered.

3. Learned counsel for the applicant contended that there is no reasonable ground to believe that the applicant has committed the alleged offence; the applicant is innocent and has been falsely implicated in the instant case due to enmity with police; the prosecution story is false, fabricated and concocted and highly unbelievable and without any independent or corroborative piece of evidence. The learned counsel has further argued that the alleged recovered narcotic has been foisted upon the applicant; all P.Ws. are police personnel and no private person has been associated to act as mashir of arrest and recovery; in terms of judgment passed in the

case of Ghulam Murtaza v. State (PLD 2009 Lahore 362), the case of the applicant does not fall within the prohibitory clause of section 497 (1) Cr.P.C.

4. Learned Special Prosecutor ANF has raised objection and submitted that the applicant has committed a heinous offence; that the sentencing policy as laid down in the case of Ghulam Murtaza (Supra) is not applicable at this stage; that the offence is against society, hence the applicant does not deserve any concession.

5. I have heard the learned counsel for the applicant as well as learned Special Prosecutor ANF and perused the material available on record.

6. It is well settled that at the bail stage deeper appreciation of evidence cannot be gone into and only it is to be seen as to whether applicant is *prima facie* connected with the commission of offence or not. It is an admitted position on record that 1600 grams of charas was allegedly recovered from the applicant; that the sample of narcotic was sent to the Chemical Examiner with a delay of 02 days for which no plausible explanation has been furnished; that due to delay in sending the sample to the Chemical Examiner by the police, a reasonable doubt has been created in the instant case; despite having information in advance, the complainant did not bother to pick a private person to act as mashir of arrest and recovery; as per the sentencing policy as laid down in the case of Ghulam Murtaza (Supra) for the alleged recovery of 1600 grams of Charas, the sentence provided is R.I. for 04 years, 06 months and fine Rs.20,000/, hence the case of the applicant does not fall within the prohibitory clause of section 497 Cr.P.C; moreover, no private witness has been associated; prosecution has not claimed that the applicant is previously involved in similar type of case; applicant has been in continuous custody since the date of his arrest and is no more

required for any purpose of investigation; no useful purpose would be served if the applicant is kept behind the bars for an indefinite period.

7. In view of above, the case of the applicant appears to be one of further inquiry as envisaged under section 497 (2) Cr.P.C. Accordingly, the application is allowed and the applicant is admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs.100,000/- (Rupees one hundred thousand) and PR Bond in the like amount, to the satisfaction of the trial Court.

8. The findings made hereinabove are tentative in nature and the trial Court shall not be influenced upon by any of the same while deciding the main case on merits.

JUDGE

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