

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

Cr. Bail A. No.S-545 of 2015.

Date of hearing & decision: 08-09-2015.

Mr. Shabeer Hussain Memon, Advocate for the applicant.

Syed Meeral Shah, D.P.G.

NAZAR AKBAR, J: - Through the instant application, applicant Mukarmeen seeks post-arrest bail in Crime No.51/2015, registered with Police Station Jamshoro, under section 9 (c) CNS Act, 1997.

2. Briefly, the facts of the prosecution case are that, on 15.03.2015, complainant SIP Roshan Ali Tunio, Additional SHO P.S. Jamshoro alongwith his subordinate staff while patrolling in his area, arrested the applicant/accused from SDA Nursery and recovered 2.0 kilograms of charas from his possession. Thereafter, the accused and recovered narcotic 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 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 D.P.G. Sindh appearing for the State has raised objection and submitted that the applicant has committed a heinous offence; the offence is against society, hence he does not deserve any concession.

5. I have heard the learned counsel for the applicant as well as learned D.P.G. Sindh 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 2000 grams of charas was recovered from the applicant; the sample of narcotic was sent to the Chemical Examiner with a delay of 17 days for which no plausible explanation has been furnished; further under the law such sample should have been sent within 72 hours; due to delay in sending the samples 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 2000 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 same nature of the cases; 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, vide short order dated 08.09.2015, the applicant was admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs.100,000/- (one hundred thousand) and PR Bond in the like amount, to the satisfaction of trial Court and above are reasons for that order.

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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