

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

Before:

Mr. Justice Mohammad Karim Khan Agha

Cr. B.A. No.S-174 of 2017.

Imtiaz Ali

Versus.

The State.

Applicant : Imtiaz Ali	Through Mr. Faisal Nadeem Abro, Advocate
Respondent : The State	Through Mr. Shahid Ahmed Shaikh, A.P.G.
Date of hearing	06.04.2017.
Date of order	07.04.2017.

ORDER

**MOHAMMAD KARIM KHAN AGHA, J.-** Through this application, the applicant (Imtiaz Ali) seeks post-arrest bail in Crime No.29 of 2017, registered at Police Station Hala New, under section 9(c) of Control of Narcotic Substances Act 1997 (CNSA).

2 The facts of the case in brief are that on 09.02.2017 complainant SIP Muhammadi Laiq Bhutto along with his sub-ordinate police personnel during patrolling in his jurisdiction reached at Dargah Mai Sati Graveyard, apprehended the applicant while he was driving Mehran Car bearing registration No.AVN-870 and secured 1730 grams of charas from his possession. Out of total narcotic 160 grams of charas were sealed separately for chemical examination whereas remaining narcotic was sealed separately. The Mehran Car was also seized under section 550 Cr.P.C. Thereafter, the recovered narcotic, vehicle and the applicant were brought at Police Station where FIR was lodged. After usual investigation, the challan was submitted before the trial court.

3. Learned counsel for the applicant contended that the applicant is completely innocent and has been falsely involved in the present case by the police due to non-payment of illegal gratification demanded by SHO PS Hala; that the applicant is a retired soldier from Pakistan Army and running a grocery shop; that the alleged narcotic has been sent for chemical examination after an unexplained delay, that the alleged offence is punishable for 05 years and 06 months as only 1.73KG of charas has been recovered, hence it does not fall within the prohibitory clause of section 197 Cr.P.C.; that the applicant has no criminal history and that for all the above reasons the applicant should be enlarged on post arrest bail.

4. In support of his contentions learned counsel for the applicant relied upon the cases of **Raja Muhammad Younas v. The State** (2013 S C M R 669), **The State v. Javed Khan** (2010 S C M R 1989), **Wajid alias Waji v. The State** (2016 P Cr. L J 831), **Ali Hassan alias Hasan v. The State** (2014 Y L R 188), **Ghulam Hussain v. The State** (2014 Y L R 874), **Nadeem Zafar v. The State** (2014 Y L R 636) and **Muhammad Naeem-ul-Haq v. Muhammad Iqbal and 3 others** (2012 Y L R 85).

5. Learned A.P.G. for the State while opposing the bail application contended that the applicant is not entitled for bail as there is sufficient material on record to show that he had committed the offense for which he is charged which is a heinous one and against society, that his case falls under S.9(c) CNSA, that it falls within the prohibitory clause and as such the application for post arrest bail should be declined.

6. In support of his contentions learned A.P.G. relied upon the cases of **The State through Director-General, Anti-Narcotics Force, Rawalpindi v. Abdul Ghani** (2010 S C M R 61), **Nadeem Ashraf v. The State and others** (2013 S C M R 1538) and **Socha Gul v. The State** (2015 S C M R 1077).

7. I have heard the learned counsel for the applicants, APG, perused the record, considered the relevant law and the case law cited at the bar.

8. As per settled law I have only made a tentative assessment of the material placed before me and this order shall not prejudice the case of any party at trial which shall be decided by the trial court on merit based on the evidence before it.

9. Firstly I note that the applicant's application for post arrest bail was dismissed by the trial court by detailed order dated 22-02-2017 and hence the applicant has now approached this court for post arrest bail.

10. I do not find the case law cited by the applicant to be of much assistance to him. This is because each case is to be judged on its own particular facts and circumstances.

11. In this case the applicant has been exclusively caught in possession of 1.73 KG of charas in a stolen car and the charas is undoubtedly linked to him. The quantity of charas is approx 1.7 KG and as such it will attract the provisions of S.9 © CNSA and will fall within the prohibitory clause bearing in mind the findings of the Hon'ble Supreme Court in **Socha's case** (Supra) which distinguished the case of **Ghulam Murtaza V State** (PLD 2009 Lah 362) in respect of cases concerning the grant of bail, that the chemical report has proved positive, that any delay in forwarding the chemical report will not be fatal to the prosecution case as the wording in S.4(2) of the Control of Narcotic Substances (Government Analysts) Rules 2001 (the Rules) is directory as opposed to mandatory in nature. Reference in this respect may be made to the case of **Tariq Mehmood V State** (PLD 2009 SC P.39), that the applicant has produced no material to show any malefide on the part of the police and has simply made a bald allegation and as

such this argument of a false and concocted FIR is not sustainable and is rejected. In this respect reference may usefully be made to the case of **Dolat Khan V The State** (2016 SCMR 1447); that it is a crime against society and in the light of S.51 CNSA and **Socha's case** (Supra) bail should only be granted in such cases sparingly

12. In my view prima facie there also appears to be sufficient material on record to link the applicant to the commission of the offense for which he is charged. Additionally in my view the charge has already been framed and there are only two PW's to be examined and as such it is a fit case which can be dealt with by giving appropriate directions to the trial Court.

13. Thus, based on the particular facts and circumstances of this case the post arrest bail of the applicant is dismissed. However, the trial Court is directed to complete the trial within 2 months of the date of this order. The office shall transmit a copy of this order to the concerned trial court for compliance.

Hyderabad

Dated: 07-4-2017