

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT YDERABAD

Cr. B.A. No.S-342 of 2017.

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

15.06.2017.

Mr. Rai Chand, Advocate for the applicant.

Mr. Shahid Ahmed Shaikh, A.P.G.
= see this portion is not in this bail but in other matter

Learned APG contends that he is not having the police papers as same have not been sent by quarter concerned despite issuance of letter *thrice* for such purpose. Since there can be no denial to the fact that through bail *plea* the applicant / accused seeks his **liberty** pending determination of his *guilt* while the prosecution insists continuity of deprivation thereof. Thus *prima facie* it involves an *exercise* which directly relates to a guarantee, provided by Article 9 of Constitution hence it is not expected that police officials can be allowed to act in a manner which may cause *prejudice* to such a proceedings. There is *categorical* stand of learned APG that letter for police papers have been issued *thrice* which would have been with direct reference to order of the Court yet he complains to have not received the same which is sufficient to show an attempt on part of the police to thwart proceeding of the Court hence should not go unnoticed. Accordingly, issue contempt notice against SSP Umerkot.

2. However, since as *already* observed that proceedings on a bail *plea* directly involves a question of *liberty* of a person hence such proceedings cannot be delayed merely for want of police papers which *otherwise* are being avoided by police particularly when the available material is sufficient to believe that *either* side have due knowledge

and notices of their respective *pleas*. Accordingly, the matter is taken up and heard.

3. Through instant bail application, applicant seeks post-arrest bail in Crime No.10/2017, registered at Police Station Dilber Khan Mehar, under section 9(c) of Control of Narcotic Substances Act, 1997.

3. At the outset, learned counsel for the applicant contends that applicant has been booked under 9(c) of Control of Narcotic Substances Act, 1997, on the plea that he was found possessing 15 kilograms Opium (poppy) straws; whereas keeping poppy straw itself is not an offence as mentioned in definition of Opium. He refers case of **Masud Ahmed v. The State** (2008 YLR 1784). At this juncture, learned APG refers Notes of second definition wherein it is provided that “ **Poppy head.** *‘Poppy head’ or ‘poppy straw’ are narcotic drug and offences relating to them are punishable under CNSA, 1997, however, poppy head cannot be equated with the actual substance popularly known as opium or heroin etc. [2011 YLR 1692].*” However, he contends that instant crime is against society but concedes that there is no criminal history of applicant.

4. At the outset, it would be conducive to refer paragraph-6 of referred case, which is that:

“6. We have heard the learned counsel for the petitioner as well as the learned Special Prosecutor for ANF and have also perused the record. The definition of ‘opium’ has been given in clause (iii) of subsection (t) of section 2 of the Act, which is reproduced below:-

“any mixture with or without natural materials of any of the above forms of opium, but does not include any preparation containing not more than 0.2 per cent of morphine.”

It is manifest from the above provision of law that the “poast” can only be considered a narcotics substance within the meaning of the Control of Narcotic Substances Act, 1997 if the same contains 0.2 per cent of morphine. The report of the Chemical Examiner reveals no such percentage and it is yet to be determined whether according to the report of Chemical Examiner the case against the petitioner falls within the purview of section 9(A), 9(B) or 9(C) of the Act which can only be

determined by the learned trial Court after recording evidence and receiving percentage report from the Chemical Examiner.”

5. From above, it is quite clear that an *allegation* of possessing **‘poppy straw’** would not necessarily make it an *offence* unless such possessed articles are established to be containing 0.2 per cent of morphine. Since it is yet to be determined besides chemical report is not clear, with regard to percentage of opium and in such *eventuality* the prosecution would require to establish *status* of such alleged recovery to be **‘narcotics’** within meaning of the Act. Thus, *prima facie* at this stage, this is a case of further inquiry. Accordingly, the applicant is admitted to post-arrest bail subject to furnishing solvent surety in the sum of Rs.100,000/- (Rupees one lac) and P.R. Bond in the like amount to the satisfaction of the trial Court.

While parting, I feel it quite necessary to add here that since the **poppy straw** *itself* is not an offence unless it contains 0.2 per cent of morphine which could only be determined / analyzed by the Chemical Examiner therefore whenever such like property is sent for chemical analysis the Chemical Examiner must specify this aspect as this is *first* requirement for one to charge with criminal liabilities (possessing narcotics) under this Act. In absence of a negative report the Court would competently decide whether to proceed or *otherwise* while in case of a *positive* report the case would be proceeded in accordance with law. Let the copy of this order be sent to Chemical Examiner as well to SSPs for information and compliance.

Bail application stands disposed of.

JUDGE

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