

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Bail Application No.S-191 of 2017

DATE

ORDER WITH SIGNATURE OF JUDGE

Date of Hg: 07.08.2017

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Mr. Ghulamullah Chang, advocate for applicant

Mr. Amjad Ali Sahito Spl. Prosecutor ANF

ORDER

ARSHAD HUSSAIN KHAN, J: Through this order, I intend to dispose of above bail application.

2. The applicant/accused namely Abdul Majeed son of Gul Hassan, through the above bail application has sought post arrest bail in case bearing Crime No. 38 of 2015 registered under Section 6/9-C of C.N.S Act, 1997, at Police Station ANF, Hyderabad.

3. Brief facts, as narrated in the F.I.R., are that on 30.12.2015 the complainant SIP Syed Salman of P.S. ANF, Hyderabad, was available at the P.S, where he received a spy information through his superior officers that one person namely Abdul Majeed was about to come at bus stop main Super Highway with a huge quantity of Narcotics to deliver the same to his any specific customer. And an immediate act would cause a definite arrest and recovery. Upon such information, one raiding party was constituted and left the P.S vide entry No.6 at 1300 hours. Thereafter, the complainant party reached at the pointed out place at 1330 hours, where they saw a person standing while holding a black shopper in his right hand, who was apprehended along with the said black shopper. The persons available at the place of incident were asked to act as witnesses, but they refused due to passengers, as such H.C. Muhammad Umer and P.C Kashan were nominated as mashirs. The apprehended person disclosed his name as Abdul Majeed son of Gul Hassan by caste Brohi, resident of Goth Jehangir Junejo, Tehsil Tando Adam, District Sanghar. The black shopper was secured from the apprehended person, upon checking seven slabs of *Chars* and four pieces of small and big pieces of *Chars* were found. The recovered *Chars* was weighed 4.350 K.G (gross). The recovered *Chars* was subsequently sent for chemical examination. With recovered *Charas*, the Act of

the accused falls under Section 6/9-C Control of Narcotic Substances Act, 1997 and he was arrested.

4. The case of the applicant/accused as averred in the bail application is that the applicant/accused is innocent and has been implicated in the case by the police with malafide intention and bad motives at the instance of Waderas of Applicant's village. It is also averred that on 30.12.2015, the house of the applicant/accused situated in his village viz. village Jahangir Junejo, Taluka Tando Adam, District Sanghar was raided by heavy contingent of ANF, during the said raid the police personnel looted valuable articles including mobile phones, cash and gold ornaments and took away the applicant/accused and 3 others and on the same day applicant/accused was falsely implicated in the above case. Against the above tyranny and brutal act of ANF, Hyderabad, Criminal Misc. Application No.28 of 2016 under Section 22-A Cr. P.C. was filed by Mst.Bakhtawar before the learned Court of District and Sessions judge, Tando Adam, who allowed the same vide order dated 17.02.2016 and after hectic efforts, FIR No.34 of 2016 under Section 395, 342 PPC has been lodged by Mst.Bakhtawar at P.S. Taluka Tando Adam against the complainant and his subordinates. The villagers also protested against the ANF Hyderabad Officials before print and electronic media and such news were also published in daily newspapers and telecasted on news channels. Further averred that from the said news it becomes clear that applicant/accused was arrested by ANF police from his house and has been falsely implicated in the present case, otherwise the applicant/accused has no concern with the alleged crime and the case of the applicant/accused requires further inquiry. Further averred that as per dictum laid down by the Honourable Supreme Court, 4350 grams Chars is punishable for 7 years and 6 months, as such same does not fall within the prohibitory clause of Section 497 Cr.P.C. It is also averred that though it is alleged in the FIR that applicant/accused has been arrested from the busy place of the city, however, no independent person of the locality was called to act as mashir or witness of the arrest and recovery, which is violation of Section 103 of Cr.P.C on the part of police. Further averred that the prosecution story is false, fabricated and highly unbelievable and is without any independent or corroborative piece of evidence and as such the case of the applicant/accused is of further inquiry.

5. Learned Counsel for the applicant/accused, during the course of his arguments while reiterating the contents of the application, has contended that

the case of the applicant is a clear-cut case of further inquiry and the applicant is entitled to the grant of bail.

6. The learned Special Prosecutor ANF has vehemently opposed the bail application and argued that the present case falls within the exceptions of the general rule. Learned Special Prosecutor ANF further contended that the applicant/accused has been apprehended with 4350 grams of *Chars*, hence he is not entitled for the bail. Further contended that the offence punishable under Section 9-C of Control of Narcotic Substances Act, 1997 falls under the prohibitory clause of Section 497 Cr.P.C. Further contended that the FIR lodged by Mst.Bakhtawar against the complainant and the other officials of ANF has been cancelled by declaring it as 'C' Class by the learned judicial Magistrate Tando Adam, copy whereof has been placed by the learned Special Prosecutor. He also argued that in the circumstances, the applicant is not entitled to the concession of bail in the present case. Learned Special Prosecutor has also relied upon the following case law:-

(i) **2008 SCMR 1254 ZAFAR v. the STATE.**

In this case, the Hon'ble Supreme Court while dismissing the appeal has held that sections 20 to 22 of C.N.S.Act. being directory, non-compliance thereof would not be a ground for holding the trial/conviction bad in the eyes of law. Further held that the police employees are the competent witnesses like any other independent witness and their testimony cannot be discarded merely on the ground that they are the police employees.

(ii) **2015 SCMR 1077 SOCHA GUL v. the STATE**

In this case, the Hon'ble Supreme Court while discussing CNS Act of 1997 has held as under:

“ 8. It is pertinent to mention here that offences punishable under C.N.S. Act of 1997 are by its nature heinous and considered to be the offences against the society at large and it is for this reason that the statute itself has provided a note of caution under section 51 of C.N.S. Act of 1997 before enlarging an accused on bail in the ordinary course. When refer to the standards set out under section 497, Cr.P.C. for grant of bail to an accused involved in an offence under section 9(c) of C.N.S. Act of 1997, even on that basis we find that an accused charged with an offence, prescribing various punishments, as reproduced above, is not entitled for grant merely on account of the nature or quantity of narcotics substance, being four kilograms. Firstly, as deeper appreciation of evidence is not permissible at bail stage and Secondly, in such situation, looking to the peculiar features and nature of the offence, the trial Court may depart from the normal standards prescribed in the case of Ghulam Murtaza

(supra) and award him any other legal punishment. Thus, in our opinion, ratio of judgment in the case of Ghulam Murtaza (supra) is not relevant at bail stage.

9. For the foregoing reasons, leave is refused and this petition is dismissed”

7. After giving careful consideration to the arguments of the learned Counsel for the applicant/accused and Special Prosecutor ANF as well as perusal of record and the case law cited at the Bar, I find that the applicant/accused is nominated in the FIR with specific role and further the applicant/accused was arrested at the spot at the day time and a contraband narcotics have been recovered from the exclusive possession of the accused. Furthermore, as per the dictum laid by the Hon'ble Supreme Court in the case of SOCHA GUL (supra), offences punishable under C.N.S Act of 1997 are by its nature heinous and considered to be the offences against the society at large and it is for this reason that the statute itself has provided a note of caution under Section 51 of C.N.S Act of 1997 before enlarging an accused on bail in the ordinary course. It is also held in the case that deeper appreciation of the evidence is not permissible in the case, hence the newspaper clippings, filed along with the bail application, cannot be considered at this stage.

8. As regards the contention of the learned Counsel for the applicant/accused that no credible witness and private person was associated as Mashir in this case, the same is misconceived as much as by virtue of Section 25 of the Act, non-citing of public witness is not fatal to the prosecution case as Section 103 Cr.P.C has been excluded from its application in cases of narcotics. In this context reference can be placed on a case of ZULFIQAR AHMED v. the STATE (2006 SCMR 800). Furthermore, the Hon'ble Supreme Court in the cases of MUHAMMAD KHAN v. the STATE (2008 SCMR 1616), TORIQ MEHMOOD v. the STATE through Deputy Attorney-General, Peshawar (PLD 2009 SC 39) has held that mere fact that the witnesses belong to police is no ground to discard their evidence. They are as good and respectable witnesses as other public witnesses and their statement cannot be discarded for the reasons that they were the police employees.

9. As regards the other contention of the learned Counsel of the applicant/accused that FIR lodged against the complainant and his subordinates reflecting malafide on the part of the complainant and other, has been repelled from the order dated 15.03.2017 passed by the learned Judicial Magistrate-II, Tando Adam, whereby the said FIR has been cancelled.

10. In view of the foregoing, I am satisfied that on the basis of facts as available on the record, the prosecution has succeeded in making out a reasonable case, which *prima facie* connects the applicant/accused with the possession of the narcotic substances, which constituted an offence under Section 6 of the C.N.S. Act, 1997, and therefore, I am of the view that the applicant has failed to make out a case for grant of bail and as such this bail is liable to be dismissed.

11. Needless to say, the observations made in this order are of a tentative nature and only for the purposes of this bail application. Nothing herein shall affect the determination of the facts at the trial or influence the Trial Court in reaching its decision on the merits of the case. The Trial Court is directed to complete the trial within a period of three months.

12. Foregoing are the reasons for short order dated 07.08.2017, whereby this bail application was dismissed.

JUDGE