

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

***Cr. Bail Application No.S-328 of 2017***

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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*Date of Hearing: 11.08.2017*

*Date of Order: 11.08.2017*

*Mr. Shahzad Ahmed Narejo, Advocate for applicant/accused.*

*Mr. Shahzad Saleem Nahiyoon, Deputy Prosecutor General.*

**ORDER**

**ARSHAD HUSSAIN KHAN, J:-** This application for bail is filed on behalf of the applicant/accused namely Qamar Abbas, son of, Qaramat Hussain Rajput in case Crime No.207 of 2016 registered at Police Station B-Section, Nawabshah, for offence under Section 9(c) of Control of Narcotic Substances Act, 1997, after his bail plea has been rejected by the Trial Court.

2. Brief facts, as disclosed in the F.I.R., are that on 13.12.2016 at 0330 hours, the complainant Inspector Muhammad Iqbal Wassan of P.S B-Section, Nawabshah, lodged the aforesaid FIR, wherein he has alleged that on 13.12.2016 at 0030, he left Police Station alongwith his subordinate staff in official vehicle vide daily diary entry No.28 for patrolling. During patrolling in different places, when the police party reached at Jam Sahib Road, Line Par, Nawabshah, they received spy information that a person namely Qamar Abbas Rajput is coming from Sukkur to Nawabshah in train wearing black colour jacket and having *Heroin* in black colour shopper. On receipt of such spy information, the police party proceeded to the pointed place and reached at Nishat Chowk Line Par, Nawabshah and started searching there and at about 0230 hours, they saw on the street lights that a person wearing black colour jacket coming from Railway Station towards Line Par Nishat Chowk with black colour shopper on his shoulder. The police party stopped him for checking, who tried to run away but he was apprehended by the Police, who on inquiry disclosed his name as Qamar Abbas S/o Karamat Hussain Rajput. Personal search of the accused in presence of *mashirs* namely ASI Khan Muhammad Jamali and ASI Muhammad Javed Rajput was conducted and from his possession a black colour shopper was secured in which four white colour packets of *Heroin* were available, which were also secured. The recovered *Heroin* was weighed 2000 grams. It is stated that 200 grams from each packet as

sample were separated for sending to the chemical examiner for its examination. The remaining 1200 grams of *Heroin* were also separately sealed. On further search, cash of Rs.3000/- from the accused was secured. On inquiry, the accused disclosed that he brought the *Heroin* from Sukkur for selling. With recovered *Heroin*, the Act of the accused falls under Section 9(c) Control of Narcotic Substances Act, 1997 and he was arrested.

3. Learned Counsel for the applicant/accused has contended that the applicant/accused is innocent and has been implicated in the case by the police with malafide intention and bad motives. It is also contended that the place of arrest of the applicant/accused is Nishat Chowk, which is a populated area but the Police has failed to associate any private witness as *mashir* to witness the recovery proceedings, which is clear violation of Sections 21 and 22 of Narcotics Act and Section 103 of Cr.P.C; that the mashirnama of arrest and recovery does not show the description of the applicant/accused; that only samples from the recovered narcotics were sent and whole case property was not sent for chemical examiner which is also violative of the law, and further the offence, as such, at the most would be covered by Section 9(b) of the C.N.S. Act, which does not attract the bar contained in Section 51 of the Control of Narcotic Substances Act; that all the P.Ws are police officials, who are interested and subordinate of the complainant. It is also contended that accused was arrested from his house and not from the Nishat Chowk as alleged in the FIR. Further contended that police entered into the house of the applicant/accused and arrested the accused, which fact can be corroborated from photographs of CCTV camera filed along with bail application. Further contended that the applicant/accused was arrested on 10.12.2016 but his arrest in the FIR was shown as 13.12.2016. The learned Counsel also contended that the prosecution story is false, fabricated and highly unbelievable and is without any independent or corroborative piece of evidence, as such the case of the applicant/accused is of further inquiry and the applicant is entitled to the grant of bail for which he is ready to furnish required surety. Learned Counsel in support of his contentions has relied upon the cases reported as 2000 P.Cr.L.J 1317 (*LIAQUAT ALI V. THE STATE*), 2006 SCMR 1051 (*WARIS KHAN & 02 OTHERS V. THE STATE*), 2007 P.Cr.L.J 1019 (*AMIR BUX V. THE STATE*), 2009 P.Cr.L.J 558 (*ABDUR RASOOL v. THE STATE*), 2013 YLR 1840 (*SHAHID V. THE STATE*) AND 2015 P.Cr.L.J 235 (*ABDUL QADIR V. THE STATE*)

4. The learned Deputy Prosecutor General opposed the bail application and argued that the present case falls within the exceptions of the general rule. Learned D.P.G further contended that the applicant/accused has been apprehended with 2000 grams of *Heroin*, hence, he is not entitled for the bail. It is 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. Learned D.P.G also argued that in the circumstances, the applicant/accused is not entitled to the concession of bail in the present case. Learned D.P.G in support of his stance in the case has relied upon the cases reported as: *2010 SCMR 1989 (THE STATE V. JAVED KHAN)*, *2002 P.Cr.L.J 971 (BARKAT V. THE STATE)*, *2003 P.Cr.L.J. 106 (REHMANUDDIN & OTHERS V. THE STATE)* and *2003 P.Cr.L.J 821 (SAEED AHMAD V. THE STATE)*.

5. After giving careful consideration to the arguments of the learned Counsel for the applicant/accused and learned D.P.G 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. Moreso, the Hon'ble Supreme Court in the case of *SOCHA GUL V. THE STATE (2015 SCMR 1077)*, has observed that the 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 photographs filed along with the bail application, cannot be considered at this stage.

6. Furthermore, in the case of *ZAFAR V. THE STATE (2008 SCMR 1254)*, the Honourable 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".

7. 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 the 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)*, *TARIQ 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.

8. As regards the contention of learned counsel for the applicant/accused in respect of sending samples instead of entire recovered quantity for chemical examination, it is not illegality, the trial Court can send the rest of the recovered contraband for chemical examination on the application of the accused. Reference in this regard can be made to the case of *ALI MUHAMMAD v. the STATE (2003 SCMR 54)*.

9. 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 9(c) 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 the instant bail application is liable to be dismissed.

10. 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.

11. Foregoing are the reasons for my short order dated 11.08.2017, whereby this bail application was dismissed.

**JUDGE**