

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
Criminal Bail Application No. 1769 of 2016

Applicant: Dilawar Khan s/o. Kamal Gul,  
through Mr. Inamullah, advocate.

Respondent: The State, through Mr. Shafiq Ahmed,  
Special Prosecutor, ANF.

Date of hearing: 08.02.2017  
Date of order: 08.02.2017

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**ORDER**

**Zafar Ahmed Rajput, J:-** Through instant Criminal Bail Application, applicant/ accused Dilawar Khan son of Kamal Gul seeks his post-arrest bail in Crime No.34/2016, registered at P.S. ANF Clifton, Karachi, under section 6/9-B, CNS Act, 1997. His earlier bail application was heard and dismissed by the learned Special Judge-II, (CNS) Karachi in Special Case No. 392/2016, vide order dated 29.10.2016.

2. The allegation against the applicant/ accused is that on 17.06.2016 at 2030 hours he was found in possession of 1000 grams heroin at Café Student Biryani, Saddar, Karachi.

3. Learned counsel for the applicant/ accused has mainly contended that the applicant/ accused is innocent and has falsely been implicated in this case; that despite the fact that the ANF officials had prior spy information but they failed to arrange any mashir from the locality to witness the alleged recovery from the possession of applicant/ accused; that there is no previous record of the applicant/ accused in indulging in any such case; that the alleged offence under section 9-B of the CNS Act,

1997 does not fall within the prohibitory clause of section 497 Cr. P.C., hence, he is entitled to the concession of bail. In support of his contentions, learned counsel for the applicant/ accused has relied upon the case of (1) ATEEB UR REHMAN @ ATTI MOCHI V. THE STATE (2016 SCMR 1424), (2) SYED HYDER ALI SHAH V. THE STATE (2016 P. Cr. L.J. 975) and HABIBULLAH V. THE STATE (SBLR 2016 Sindh 1902).

4. On the other hand, learned Special Prosecutor ANF has strongly opposed this application on the grounds that the provisions of section 103 Cr. P.C. has not been made applicable in CNS Act, therefore, it is compulsory for the police officials to associate any private mashir from the locality to witness the alleged recovery. However, he has admitted that there is no previous record of the applicant/ accused showing his involvement in any such like cases.

5. Heard the learned counsel for the applicant/ accused as well as learned Special Prosecutor, ANF and perused the material available on record.

6. It appears that the ANF Officials had prior spy information about the appearance of the applicant/ accused at the spot along with heroin but admittedly no witness of the locality has been associated in proceeding of alleged recovery of the heroin from the possession of the applicant/ accused. No doubt, the provisions of section 103 Cr. P.C. is not applicable in view of section 25 of CNS Act, 1997, however, when the officials of ANF had prior spy information about the presence of the applicant/ accused at a thickly populated commercial area, it was incumbent upon them to associate private mashirs from the locality. The alleged offence being

punishable under section 9-B of CNS Act, 1997 does not fall within the prohibitory clause of section 497 Cr. P.C.

7. In view of above, the applicant / accused is admitted to bail subject to furnishing solvent surety in the sum of Rs.02,00,000/- and P.R. Bond in the like amount to the satisfaction of the trial Court.

8. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicant on merits and if applicant in any manner tries to misuse the concession of bail, it would be open for the trial Court to cancel his bail after issuing him the requisite notice.

JUDGE

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