

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

Cr. B.A. No. S- 757 of 2017

DATED	ORDER WITH SIGNATURE OF JUDGE
08.02.2018	

For hearing

Mr. Muhammad Sharif Siyal, advocate for applicant.
Mr. Shahzado Saleem Nahiyoon, D.P.G.

OMAR SIAL, J.- Applicant Sabagho has sought post -arrest bail in Crime No. 33 of 2017 registered at Khadher police station district Shaheed Benazirabad under Section 9(c) of the CNS Act, 1997. Earlier, his pre-arrest bail was turned down by the learned Special Judge, Shaheed Benazirabad on 28.8.201.

2. Brief facts of the prosecution case as stated by the complainant SIP Ghulam Hussain Pirzado in the aforementioned FIR are that on 03.06.2017 he along with his subordinate staff was out on patrol when he received spy information that notorious criminal Sabhago Magsi who is wanted in many other cases is present in Kumb Leema Caravansary (Musafir khana). The police party proceeded to the identified spot and saw one person with a black colour plastic bag who on seeing the police party tried to flee but was apprehended. On his search, 2000 grams of charas was found in the bag he carried. The police sealed the charas on the spot and thereafter brought him and the recovered property to the police station and registered the above FIR.

3. I have heard learned counsel for the Applicant as well as learned DPG and have examined the available record with their able assistance. My observations are as follows:

- i. The learned counsel for the Applicant has primarily argued that all the witnesses are police officers and that section 103 Cr.P.C. was not complied with. In this regard my observation is that section 25 of the Control of Narcotic Substances Act, 1997 excludes the applicability of section 103 Cr.P.C in cases falling under that law. Reference may be made to **Abdul Rasheed v. The State (2009 SCMR 306)** and **Tariq Mehmood v. The State (PLD 2009 SC 39)**.

- ii. The learned counsel has next argued that although spy information had been received by the complainant, he did not bother to take a planted purchaser with him. With respect to the learned counsel this is hardly a ground to entitle a person to bail as the mere possession of narcotics is illegal pursuant to section 6 of the CNS Act, 1997.
- iii. Learned counsel has next asserted that although there are a number of cases registered against the Applicant, yet he has been acquitted in most of them. Be that as it may, however, as I have not taken this aspect in account in dismissing the bail application of the Applicant, the same is devoid of force.
- iv. As regards the learned counsel's argument that in accordance with the guidelines given in the Ghulam Murtaza case ((PLD 2012 SC 380)), the Applicant can only be sentenced to 5 years and 6 months imprisonment, with much respect, the same does not find favour with me in view of the observations of the Hon'ble Supreme Court in Socha Gul vs The State (2015 SCMR 1077) and Nadeem Ashraf vs The State (2013 SCMR 1538).
- v. Prima facie it appears that the Applicant was apprehended red handed with a sizeable quantity of charas. The entire property was sent for analysis and the report was in the positive.

4. In view of the above, with much respect, I am of the view that the learned counsel has been unable to make out a case for grant of bail and accordingly the same is dismissed.

JUDGE