

IN THE HIGH COURT OF SINDH COURT AT KARACHI

Criminal Bail Application No. 918 of 2017

Muhammad Akram.....APPLICANT

Versus

The State.....RESPONDENT

Mr. Mehmood Habibullah Advocate for the Applicant.

Mr. Shafique Ahmed, Special Prosecutor for ANF.

Date of hearing : 18.7.2017

O R D E R

Adnan-ul-Karim Memon, J. - The Applicant namely Muhammad Akram is seeking post arrest bail in F.I.R No. 01/2017 registered at Police Station Anti-Narcotic Force, Gulshan-e-Iqbal Karachi, for offences punishable under section 6 read with section 9 (c), Control of Narcotic Substances Act, 1997.

1. Brief facts of the prosecution case are that on 07.01.2017 at about 1405 hours Sub-Inspector Mamoon-u- Rasheed of Police Station Anti-Narcotics Force, Gulshan-e-Iqbal Karachi lodged complaint against the Applicant; that he received information that one person namely Muhammad Akram is reaching, at about 1200 hours, near Mama Hotel, Sector No.7, Baldia Town, Karachi, on his motorcycle for supplying Narcotic drugs to his customer. On receipt of said information a raiding party was formed, consisting of ASI Rashid Ali, P.C Munsher Ahmed, Sepoy Adil and other Anti-Narcotic Force staff, under the supervision of SHO/Inspector Asim Raza ,vide roznamcha entry No.4. At 1100 hours,

they reached at the pointed spot where they found one person sitting on motorcycle near Mama Hotel, and two blue color shoppers were hanging in the handle of his motorcycle, they apprehended him. Police officer asked the people of the locality to act as witness but they refused, then ASI Rashid Ali and P.C Munsheer Ahmed acted as Mashirs of arrest and recovery. Accuser's name was inquired, who disclosed his name to be Muhammad Akram Son of Maqsood Ali. Both blue colour shoppers opened and found, in first blue colour shopper consisting of little and big pieces of Charas lying therein, which were weighed with electronic scale which came to be 1200 Grams Gross Weight of charas, and the same was sealed at the spot for the purpose of chemical examination, another blue colour shopper was opened and found therein Heroin lying in Tokens of Paper Purees. The same were weighed with electronic scale which came to be 1200 Grams Gross Weight of heroin. The same was sealed at the spot for the purpose of chemical examination. Police also recovered other material from the custody of accused. Accused and recovered properties were brought at police station; thereafter police lodged FIR under section 6 and 9-C, of Control of Narcotic Substance Act, 1997 against Applicant.

2. Investigating Officer recorded statements of prosecution witnesses, interrogated Applicant; got conducted chemical examination of recovered Narcotic Substance and obtained its report on 19.01.2017. Finally, Investigating Officer submitted Charge Sheet on 18.1.2017 before Special Court for Control of Narcotic Substances-I Karachi. The Applicant moved Bail Application No. 279 of 2017 in Special Case No. 585 of 2017, before the learned Trial Court which was dismissed vide Order dated 17.05.2017.

3. Mr. Mehmood Habibullah learned counsel for the Applicant has contended that Applicant is innocent and has been falsely implicated in

the present crime by complainant, in connivance with other police personal, due to enmity. Per learned counsel no offence has been committed by the Applicant as narrated by the police. Per learned counsel the recovery of 1200 Gram of Charas and 1200 Grams of Heroin is foisted upon the applicant in a pre-plan conspiracy; that the allegation of selling the narcotics has not been established as police failed to arrest the alleged purchaser; that the police failed to disclose that the applicant was already arrested on 30.12.2016 and falsely implicated in the present case by registering false case against the applicant on 7.1.2017; that witnesses of the alleged recovery has not been cited from the locality, therefore, alleged recovery is doubtful; that there is violation of section 103 Cr.P.C; that as per chemical report and ratio of its weight, the applicant cannot be accounted for the whole Narcotic Substance but for the material sent to the chemical examiner therefore, the applicant is entitled for the concession of bail; that the case of the applicant does not fall with the prohibitory clause 497(1) Cr.P.C ; that the applicant is working in police department, therefore, he will not jump the bail if granted to him; that charge against the applicant has not yet been framed by the learned trial court; that applicant is good police official and was recommended for promotion but due to jealousy in the police ranks he has been victimized to deprive him from the promotion and job; that mother of the applicant moved an application to the SHO Saeedabad on 30.12.2016 regarding missing of her son Muhammad Akram but nothing could be done rather applicant was involved in the present crime with malafide intention. Per learned counsel Applicant has no previous criminal record and entire case requires further enquiry into the guilt of Applicant. He lastly prays for grant of bail to the Applicant. In support of his contention, reliance has been placed upon the case of Muhammad Hanif vs. The State (SBLR 2016 Sindh 29), Hayat vs. The State (Un-

reported bail application No.1626/2015 decided on 11.05.2016 by this court), Ghulam Murtaza vs. The State (PLD 2009 Lahore 362),

4. Mr. Shafique Ahmed, learned special prosecutor, Anti-Narcotic Force opposed grant of bail to the Applicant and argued that Applicant was arrested at the spot with 1200 Gram of Charas and 1200 Grams of Heroin 1200. Per learned counsel the recovered material is Narcotics Substance, prohibited under Control of Narcotic Substances Act, 1997 which is recovered from exclusive possession of Applicant; that police is duty bound to register a case if any person possess, transports or sells and delivers on any terms as defined under Control of Narcotic Substances Act, 1997. He next argued that chemical examination Report dated 19.01.2017 of the recovered Narcotic Substance supports the prosecution case; that Applicant has been charged with offence under section 6 read with section 9 (c) of Control of Narcotic Substances Act, 1997 which is of serious nature and falls within the prohibitory clause of section 497 (1) Cr.P.C; that the prosecution has collected sufficient incriminating evidence against the Applicant and if the bail is granted the applicant will continue to commit similar criminal activities, causing harm to the public at large. He next contended that Prosecution case is fully supported by the statements of the witnesses therefore; Applicant is not entitled to the concession of bail; that the prosecution witnesses have no enmity with the Applicant which could suggest false implication of the Applicant.

5. I have heard learned counsel for the Applicant, learned special prosecutor for Anti-Narcotic Force, and perused the material available on record as well as case law cited at the Bar.

6. I am conscious of the fact that while deciding a bail application, this court has to consider the allegations made in the FIR, statements

recorded under Section 161 Cr.P.C., nature and gravity of charge, other incriminating material against the accused, legal pleas raised by the accused and relevant laws. In this regard, I am fortified by the decision of Honorable Supreme Court rendered in the case of Shahzad Ahmed versus the State (2010 SCMR 1221).

7. Tentative assessment of record reflects that Applicant is arrested red-handed with possession of 1200 Gram of Charas and 1200 Grams of Heroin (Narcotics Substances). Chemical Examination Report supports the prosecution case. The recovery of Charas and Heroine was duly witnessed by the police officials who are as good witness as any other person and who had no ostensible reason to falsely implicate the Applicant in a case of present nature. Case of the Applicant is hit by prohibition contained in Section 51 of the Control of Narcotic Substances Act, 1997. Reverting to the arguments of non-performance of provisions of section 103 Cr.P.C. section 25 of Control of Narcotic Substances Act, 1997 excludes applicability of section 103 Cr.P.C. thus, ratio of judgment in the case of Ghulam Murtaza (Supra) relied upon, is not relevant at bail stage, therefore no case of further enquiry is made out. Reliance is safely made in the case of Socha Gul vs. The State (2015 SCMR 1077)

8. I have noted that Applicant has failed to produce any material to suggest that he is falsely implicated in the alleged crime. Merely saying that mother of the Applicant has moved an application to the SHO Saeedabad regarding missing of her son (Applicant) is not sufficient to discard the prosecution story as false, which is even otherwise a factual controversy and, at bail stage only tentative assessment of the record is to be made.

9. The offence falls under section 9 (c) of Control of Narcotic Substance Act, 1997 which is punishable with life imprisonment.

10. The case law cited by the learned counsel for the Applicant is distinguishable from the facts and circumstances of the case in hand.

11. In view of the above facts and circumstances the Applicant has not made out a case for grant of bail at this stage therefore, the instant bail application is dismissed.

12. The findings mentioned above are tentative in nature which shall not prejudice the case of either party at the trial stage. However, the learned Trial Court is directed to record evidence of the material witnesses within a period of three months where after the Applicant will be at liberty to move fresh bail application before the learned Trial Court on fresh ground, if any.

13. That above are the reasons of short order dated 18.7.2017.

JUDGE