

**ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Bail Application No. 144 of 2016

Date	Order with Signature of the Judge
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For hearing of bail application.

Heard on : 12.02.2018  
For Applicant : Mr. Qasim Niazi, Advocate.  
For State : Mr. Ali Haider Salim, DPG

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Mrs. Kausar Sultana Hussain, J.:- On dismissal of bail Application No. 643/2017, by the trial Court, vide order dated 25.10.2017, the applicant has approached this Court, by filing instant bail application under Section 51 R/w Section 497 Cr.P.C, for post-arrest bail in case FIR No. 541/2017, under Section 6/9(C) CNS Act, 1997, registered at P.S. Darakhshan, Karachi.

2. Story of the prosecution case in nutshell is that complainant ASI-Abdul Rehman Abro of PS Darakhshan, Karachi lodged FIR on 13.10.2017 at about 0130 hours and alleged therein that he alongwith PC Malik Ameer and PC Khalid Mahmood left PS in official mobile for patrolling and during patrolling received spy information that a person was selling charas at Khayaban-e-Bukhari near Misri Shah Baba Tomb, Karachi. On such information complainant's party reached at the spot at about 0030 hours and on pointation of spy found a person standing near a motorcycle bearing registration No. KGX-2404, who was apprehended and he disclosed his name as Wajahat Ali Zaidi son of Gulzar Hussain Zaidi, his search was conducted and he was having polythene bag in his right hand containing packet of charas and upon weighing through digital scale, the weight of the Charas was 2250 grams. After observing required formalities at the spot the arrested accused alongwith recovered contraband Charas brought at PS where FIR was lodged against the accused.

3. Arguments heard. Record perused.

4. Learned counsel for the applicant contended that applicant/accused is innocent and falsely implicated in this case by the police with malafide intention and ulterior motives. He next contended that there is clear violation of mandatory provision of Section 21 of CNS Act. He further contended that there is violation of Section 103 Cr.PC. He also submits that no sample withdrawn for chemical analysis from the alleged recovered Charas. He lastly prayed for grant of bail. In support of his contention learned counsel for the applicant replied upon the case law i.e. 2006 MLD 1961, 2009 MLD 335, 2003 P.Cr.L.J 1139 and 2008 MLD 442 Karachi.

5. Learned Deputy Prosecutor General, Sindh opposes the concession of bail to the applicant on the ground that evidence of police officials is as good as any other respectable person, more particularly, in view of Section 25 of the CNS Act, provision of

Section 103 Cr.P.C is not attracting. Undoubtedly, case falls under the prohibitory clause; No enmity, ill-will or grudge has been alleged against the prosecution witnesses; on the contrary, sufficient material has brought by the prosecution on the record including report of chemical examiner relating to positive report of narcotic substance. So far as the contention of the learned counsel for applicant that the recovery was not witnessed by persons from public is concerned, it may be observed that section 25 of CNS Act excludes the application of section 103 Cr.P.C.

6. After hearing the arguments and perusal of the record it reveals that it is the case of alleged recovery of Charas from exclusive possession from the applicant/accused weighing 250 grams and as per section 9 © of the CNS Act conviction for recovery of contravene more than one Kilogram is death and live imprisonment or imprisonment for terms which may extend to 14 years, hence his case falls under prohibitory clause. Besides this section 21 and 25 of CNS Act are very much clear, section 21 with, seizer, entry and arrest without warrants and another not below the rank of SI of police authorize on his behalf by the Federal Government or the Provincial Government, but it has been decided by the Honourable Supreme Court in case reported in 209 SCMR 291 that investigation by an authorize officer is regularity ---- section 537 Cr.P.C. So far is concerned for peal of the applicant/accused in respect of violation of Section 103 Cr.P.C., it has been decided by the Hon'ble Supreme Court in case reported in 2009 SCMR 306 that section 25 has ----- of ---- section 103 Cr.P.C. in Narcotic cases, I hereby reproduced the section 25 of CNS Act.

7. Whatever mentioned above, I reached at the irresistible conclusion that the applicant is not entitled to grant of bail. Consequently, the instant bail application is dismissed. However, the trial Court is directed to examine complainant and one mushir of recovery within one month and dispose of the matter within a period of two months, after receipt of this order.

8. Before parting, it needs not to make clarification that the observations recorded above are tentative in nature, therefore, the trial court shall not be influenced in any manner whatsoever.

Above are the reasons of short order dated: 12.02.2018.

J U D G E