

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Misc. Application No.152 of 2017

PRESENT:

**Mr. Justice Aftab Ahmad Gorar**  
**Mr. Justice Amjad Ali Sahito**

Applicant : The State/ANF through Ms. Abida Parveen  
Channer, Special Prosecutor

Respondent : None present

Date of Hearing : 18.01.2019

Date of Order : 18.01.2019

**ORDER**

**AMJAD ALI SAHITO, J** : - Through this instant Criminal Misc. Application, the applicant/ANF seeks cancellation of bail granted to the respondent Ali Akbar by the learned Judge, Special Court-I (Control of Narcotic Substances), Karachi, vide order dated 13.06.2017 in B.A. No.380/2017 arising out of the Crime No.26/2017, for the offence under section 9(b) of the Control of Narcotic Substances Act, 1997 of Police Station ANF-II, Karachi.

2. Brief facts of prosecution case as per FIR are that on 24.05.2017 at about 05:00 hours S.I Ibrahim Aziz of PS ANF-II, Karachi on spy information arrested accused namely Ali Akbar s/o Mansoor Hussain and recovered from his possession 250 gms Gross Cocaine while the accused was coming from UGANDA TO KARACHI at JIAP International Arrival. SI Ibraheem Aziz has also prepared memo of arrest and recovery at spot and registered FIR No. 26/2017 at PS against the accused/respondent and carried out investigation. After usual investigation report under Section 173 Cr.PC was submitted before the learned trial Court. The

accused/respondent has applied for bail and he was admitted to bail vide impugned order dated 13.06.2017.

3. Learned counsel for the State/ ANF mainly contended that the applicant was arrested and from his personal possession 250-grams cocaine was recovered, hence he has committed the heinous offence; that the trial court has granted bail to the applicant in slip shot manner. She lastly prayed for cancellation of bail granted to the respondent by the learned trial Court. However, she admits that after granting of bail the accused/respondent has not misused the concession of bail.

4. We have heard the learned Special Prosecutor for ANF and perused the material available on record.

5. It is now settled that grant of bail in case not falling within the prohibitory clause of section 497 Cr.PC is a rule and refusal thereof is an exception. There is no compulsion for cancelation of bail, unless bail granted order was patently illegal, erroneous, and factually incorrect and had resulted into miscarriage of justice or where accused was forced to be making efforts to misuse the concession of bail by either extending of threat or likelihood of tampering with prosecution evidence, which is not available in this case. The case in hand the recovery is only 250-gram cocaine for which the maximum punishment provided by law is only 7 years, which does not fall within the prohibitory clause of section 497(1) Cr.P.C. the learned Special Prosecutor for ANF has failed to bring on record that after granting of bail the respondent has misused the concession of bail, all the prosecution witnesses are the police officials of ANF, therefore, tampering with prosecution evidence does not arise. Furthermore, principles for cancellation of bail are

quite different from grant thereof. Once bail is granted by a competent Court of Law, then it can be recalled if it is shown that either the bail granting of the order was perverse or was in utter disregard to the case evidence, which is not the case here. Resultantly, the instant Criminal Misc. Application merits no consideration and is hereby dismissed.

**J U D G E**

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