ORDER SHEET

IN THE HIGH COURT OF SINDH,

CIRCUIT COURT, HYDERABAD.

Cr.B.A.No.S- 1147 of 2018

DATE	ORDER WITH SIGNATURE OF JUDGE

27.02.2019.

Mr. Rasool Bux Solangi, Advocate for applicant.
Mr. Shahid Ahmed Shaikh, D.P.G. for the State.

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***ZULFIQAR AHMAD KHAN*, J**:- Through instant bail application, applicant seeks post arrest bail in Crime No.56/2018 registered at Police Station Mangli for offence u/s 9(c) of CNS Act, 1997.

2. Precisely relevant facts are that on 17.09.2018 at about 0500 hours, complainant Inspector Zulfiqar Ali Bahi of PS Mangli left Police Station for the purpose of patrolling and during patrolling complainant received spy information that present applicant is selling charas at link road leads from Chak No.3 to Chak No.5 at the curve of Chak No.07, on receipt of such information they proceeded to the pointed place and saw the present applicant standing there who on seeing the police party tried to slip away but he was apprehended and during search recovery of 04 pieces of charas total 2000 grams and cash of Rs.350/- was affected from his possession. The accused and case property were brought at Police Station. FIR was registered against the applicant. After usual investigation he was sent up for trial.

3. Learned counsel for the applicants *inter alia* contends that applicant is innocent and has falsely been implicated in the case in hand; that the recovery affected from the applicant is 2000 grams charas; chemical report is delayed; no independent person has been cited as witness though it is the case of spy information; applicant has no previous criminal record; investigation is completed; all the

prosecution witnesses are police officials hence there is no question of tampering with the prosecution evidence. He lastly contended that applicant is behind the bar since last about 05 months.

4. Learned D.P.G. opposed this application on the ground that this is a crime against society and a huge quantity of charas has been recovered from the possession of applicant/accused.

5. After careful consideration of contentions of learned counsel for the parties and meticulous examination of available record, alleged contraband narcotics is 2000 grams charas; there is no mention in the FIR that from where the police party brought the digital scale and what type of digital scale for making weight of the recovered charas. No private witnesses have been associated to witness the recovery proceedings though the complainant party had prior information about the availability of the present applicant/accused at the place of incident and even the complainant party *least* could have made an attempt to associate *private* mashirs from the place of incident; 04 pieces of charas were alleged to have been recovered from the possession of applicant/accused but it not mentioned in the FIR that what was the weight of each piece; there is a delay in sending the recovered charas for chemical examination which (*delay)* would also be required an explanation by prosecution that whether the said charas was kept in safe custody during this intervening period and even yet no chemical report has been received hence making a room for further probe. Applicant has been in continuous custody since last about 05 months without any progress in the trial and is no more required for any purpose of investigation nor the prosecution has claimed any exceptional circumstance which could justify keeping the applicant behind the bars for an indefinite period. Moreover, prosecution has not claimed that the applicant is previously involved in same nature of the cases. All the prosecution witnesses are police officials hence there is no question of tampering with the evidence. Looking to the quantity of

recovered charas from the accused at bail stage it cannot be said that maximum punishment provided in the statute for the alleged offence shall be awarded to the applicant/accused. Therefore, the case against the applicant/accused requires further inquiry.

6. It is an admitted position that case has been challaned, applicant is no more required for investigation and admittedly the case of prosecution based upon the evidence of police officials, therefore, no question thus arise for tempering with their evidence at the hands of applicant. Since whole of the case of prosecution rests upon the evidence of police officials, therefore, their evidence is required to be minutely scrutinized at the time of trial whether offence as contained in the F.I.R, allegedly committed by the applicant in a manner as narrated by the complainant or otherwise. Therefore, keeping in view the *peculiar* facts and circumstances of the instant case; continuous detention of about 05 months as well *minimum* punishment, which *normally* may be considered while dealing with bail plea, I am of the view that scale tilts in favour of the applicant for grant of bail as no *useful* purpose is likely to be served with further detention of the applicant pending determination of his guilt.

07. Keeping in view the above given circumstances, *prima facie*, applicant has succeeded to bring his case within the purview of subsection (2) of section 497 Cr.P.C, for this reason, he is admitted to post arrest bail subject to his furnishing solvent surety in the sum of Rs.50,000/-(Rupees fifty thousand) and P.R Bond in the like amount to the satisfaction of the trial Court.

JUDGE

Tufail/PA