

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

Criminal Bail Application No. 1811 of 2017  
Criminal Bail Application No. 1124 of 2017

| Date                             | Order with Signature of the Judge  |
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| For hearing of bail application. |  |
| Heard on                         | : 06.03.2018   |
| Decision                         | : 26.03.2018   |
| For Applicant                    | : Syeda Zubaida Shah, Advocate for applicant<br>In Cr.B.A. No. 1811 of 2017. |
|                                  | Mr. Mustafa Safvi, Advocate for applicant<br>in Cr.B.A. No. 1124 of 2017.    |
| For State                        | : Ms. Abida Parveen, Special Prosecutor for<br>A.N.F.                        |

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**Mrs. Kausar Sultana Hussain, J.**:- By this order, I would like to dispose off two post arrest bail applications No. 1811 of 2017 and 1124 of 2017, submitted by the applicants/accused persons arising out of one and same crime No. 08 of 2017, registered at Police Station A.N.F. Clifton, Karachi for offences under Section 6/9-C, 14.15 CNSA, 1997.

2. Brief facts of the prosecution case as disclosed in the FIR No. 08 of 2017 are that complainant Inspector Aftab Ahmed of Police Station A.N.F Clifton, Karachi, lodged the FIR and per contents of the said F.I.R on 25.2.2017 at about 1430 hours, he raided the house of accused Muhammad Subhan bearing House No. 475, Siraj Colony, Nazimabad No. 2, Karachi, alongwith his constituted raiding party and on the pointation of accused Subhan recovered 14 K.Gs 400 Grams and 600 Grams Charas from two places of the house. He took the said recovered Charas in his custody and sealed it. The applicant/accused Mohammad Subhan further disclosed that he had more narcotics in the house of his neighbor namely Ayoub Masih/co-accused, therefore, the complainant also knocked the door of neighbor Ayoub Masih/co-accused, who was identified by the applicant/accused Subhan as same person, from search of the room situated at ground floor 8 K.Gs Charas was recovered, which was also seized and sealed by the complainant and both the applicants/accused alongwith narcotics substance were brought at Police Station and F.I.R was lodged accordingly.

3. Heard Syeda Zubaida Shah, Advocate for applicant/accused Ayoub Masih in Criminal Bail Application No. 1811 of 2017, Mr. Mustafa Safvi, Advocate for applicant/accused Subhan in Criminal Bail Application No. 1124 of 2017 and Ms. Abida Parveen Channar, Special Prosecutor for A.N.F, as well as perused the record under their valued assistance.

4. It is inter alia contended by the learned counsel for the applicant/accused Ayoub Masih that the applicant/accused is absolutely innocent and has been falsely implicated in this case with malafide intention and he has committed no offence nor any incident took place and entire prosecution case is based on false story, which needs further inquiry. Per learned counsel for the applicant/accused on 23.2.2017 Sindh Rangers arrested him and shifted to unknown place, thereafter his mother Maswar Khan Wd/O Muzammil Khan filed an application before higher authorities and also to police of Police Station Rizvia Society, Karachi. Per learned counsel for the applicant/accused that the applicant/accused is a Sanitary Worker in District Municipal Corporation (West), Karachi. In support of her arguments, she relied upon the following case law.

- i. 2017 MLD 32 Karachi.
- ii. 2016 P.Cr.L.J Note 100.
- iii. 2008 P.Cr.L.J 1610 Peshawar H.C.

Per learned counsel for the applicant/accused nothing was recovered from the possession of applicant/accused and complainant miserably failed to identify as to how he arranged the measurement instrument which makes the case of the prosecution seriously doubtful, she contended that no private person was cited as witness in this case, which is clear violation of section 103 Cr.PC. The learned counsel further contended that Challan has been submitted by the I.O of the case, as such applicant/accused Ayoub Masih is no more required for any further investigation further the case does not fall within the prohibitory clause of Section 497 Cr.PC.

5. Mr. Mustafa Safvi, learned counsel for applicant/accused Mohammad Subhan has relied upon all the grounds mentioned in the Criminal Bail Application of the applicant/accused Ayoub Masih, as much as even he did not change the name of co-accused Ayoub Masih in para 3 of the grounds

of his Bail Application for co-accused Mohammad Subhan and alleged fact of arrest of co-accused Ayoub on 23.2.2017 by the Rangers and then filing application to high authorities by the mother of co-accused Ayoub, namely, Maswar Khan. However, in prayer clause he has mentioned the name of applicant/accused of Mohammad Subhan for his release on bail. Mr. Safvi has relied upon the following case laws :-

- i. S.B.L.R 2016 Sindh 1902.
- ii. 2012 Y.L.R. 1206. (Sindh).
- iii. 2012 Y.L.R. 1237. (Sindh).
- iv. 2000 M.L.D 842 (Karachi).
- v. N.L.R 1999 Criminal 384 (S.C).
- vi. 2016 P.Cr.L.J, 730 (Peshawar).
- vii. 2002 P.Cr.L.J, 1429 (Peshawar).
- viii. 2014 M.L.D 723 (Sindh).

6. The learned Special Prosecutor for A.N.F strongly opposed the concession of bail to the applicants/accused with reference to the huge quantity of contraband Charas recovered from the dwelling house of the applicants/accused and the punishment provided for under Section 9(c) of the C.N.S. Act, 1997. She further contended that the case of the applicants/accused falls within the prohibitory clause of Section 497 Cr.P.C and no animosity has been alleged against the prosecution witnesses.

7. I have heard the learned counsel for the parties and also perused the record without going deep into the merits of the prosecution case suffice it to say that it is a case of seizable recovery of Charas from the house of the applicant/accused M. Subhan weighing 20 K.Gs and from the house of applicant/accused Ayoub Masih weighing 8 K.Gs. As per Section 9(c) of the C.N.S Act, 1997 penalty upon conviction for recovery of contraband more than one K.G. is death or imprisonment for life or imprisonment for a term of which may extend to 14 years and also fine up to one Million rupees, hence the case of the applicants/accused falls within the ambit of prohibitory clause of Section 51 of C.N.S Act, 1997 deals with restriction for grant of bail in respect of certain offences, it is divided into two parts, under part one, accused, whether male or female is not entitled to be released on bail, if he or she is involved in an offence punishable with death, provisions of Sections 496 and 497

Cr.PC have been specifically excluded. So far as plea of the applicants/accused in respect of violation of Section 103 Cr.PC, it has been decided by the Hon'ble Supreme Court in case reported in 2009 SCMR 306, 2011 P.Cr.LJ 398 that Section 25 of C.N.S Act, 1997 excluded the applicability of section 103 Cr.PC in Narcotic Cases, I hereby reproduced the section 25 of C.N.S Act, 1997 as under :

*“Section 25. Mode of making searches and arrest.--- The provisions of the Code of Criminal Procedure, 1898, except those of Section 103, shall, apply to all searched and arrests insofar as they are not inconsistent with the provisions of Sections 20, 22 and 23 to all warrants issued and arrest and searches made under these sections.”*

Whatever mentioned above, I reached at the irresistible conclusion that the applicants/accused are not entitled for grant of bail. Consequently the bail applications are dismissed. The facts of the case laws cited by the learned defence counsel are distinguishable from the facts of the prosecution case.

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.

**J U D G E**

Faheem Memon/PA