

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

Criminal Bail Application No. 811 of 2018

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

Heard on : 11.06.2018

Date of order: : 26.06.2018

For Applicant : Mr. Muhammad Mubarak Shah, Advocate.

For State : Ms. Seema Zaidi, DPG.

Mrs. Kausar Sultana Hussain, J.:- Through this 2nd bail application, the applicant/accused Wajahat Ali Zaidi S/o Gulzar Hussain Zaidi is seeking post-arrest bail in crime No. 541/2017 registered u/s 6/9-C CNS Act, 1997 at P.S. Darakhshan, Karachi, which is pending before learned Special Court-II (C.N.S), Karachi.

2. Brief facts of case as per FIR lodged by complainant ASI-Abdul Rehman Abro of PS Darakhshan, Karachi are that on 13.10.2017 he alongwith his subordinate staff was on patrolling. During patrolling he received spy information that a person was selling charas at Khayaban-e-Bukhari near Misri Shah Baba Tomb, Karachi. Upon receiving such information they reached at the pointed place at about 0030 hours and on the pointation of spy informer, apprehended the said person, who was standing near a motorcycle bearing registration No. KGX-2404. The apprehended accused disclosed his name as Wajahat Ali Zaidi S/o Gulzar Hussain Zaidi. The said person was holding a polythene bag in his right hand, which was checked and 2250 grams charas was found in said bag. Hence present FIR was lodged against the applicant/accused.

3. 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 nothing has been recovered from the possession of applicant/accused and the alleged recovery has been foisted upon

him just to save the real culprits and to show the efficiency by the police. He further contended that applicant/accused is a Rikshaw driver and earns livelihood for his entire family and he was taken by the police from main Road at Qayyoomabad District East Karachi and due to non-payment of gratification, he was implicated in this case. He also contended that prosecution has miserably failed to comply with the order of this Court dated 12.02.2018, whereby, learned trial Court was directed to examine complainant and one mashir of recovery within one month and disposed of the matter within two months. He also contended that the applicant/accused is behind the bar since his arrest and he is earning person of his huge family, who is facing hardship now a days, due to his illegal confinement. He next contended that there is clear violation of mandatory provision of Section 21 of CNS Act as well as section 103 of Cr. P C. He also argued that no sample has been obtained for chemical analysis from the alleged recovered Charas. He lastly prayed for grant of bail.

4. Learned Deputy Prosecutor General, Sindh opposes the grant of present bail application 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 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. Learned DPG prayed that applicant/accused is not entitled for concession of bail, therefore, present bail application may be dismissed.

5. I have heard the arguments advanced at bar by both the parties and also perused the available record. This is second bail application of applicant/accused

and his first bail application was dismissed on merits by this Court, vide order dated 06.03.2018 with directions to learned trial Court to examine complainant and one mashir of recovery within one month from the date of order. The learned counsel for applicant/accused has preferred this second bail application on similar grounds, as were taken by him in first bail application, referred to above. Besides, learned counsel for applicant/accused mainly placed his emphasis that since the learned trial Court has failed to comply with the directions, therefore, applicant/accused may be admitted on bail. Report in this regard was called from learned trial Court, perusal of which reveals that charge against applicant/accused was framed on 06.12.2017 and immediately thereafter the learned counsel for applicant/accused preferred 265-K Cr.P.C application, which is pending adjudication and witnesses could not be examined. Since the learned counsel for applicant/accused has failed to bring any new ground on record for grant of present bail application, therefore, I find no merits in present bail application and the same is dismissed accordingly.

6. Before parting, it needs not to make clarification that the observations recorded above are tentative in nature and will not prejudice the case of either party. However, keeping in view the pendency of cases, the learned trial Court is directed to conclude with the matter within six months from the date of this order.

J U D G E

Sajjad Ali Jessar