

ORDER SHEET  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**Criminal Bail Application No. 562 / 2020**  
**Muhammad Azam S/o Abdul Hameed**

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Date

Order with signature of Judge

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For hearing of bail application.

**27.04.2020.**

Mr. Muhammad Arif Advocate for Applicant.

Mr. S. Meeral Shah Bukhari Additional Prosecutor General.

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Through this bail application, the Applicant seeks post arrest bail in FIR No. 02/2020 registered at P.S. Excise, Malir, Karachi, under Section 9-C of the Control of Narcotics Act, 1997 (CNSA). The bail application of the Applicant moved before the Trial Court stands dismissed vide order dated 27.03.2020. I have heard the Counsel for the Applicant and learned Additional Prosecutor General. My observations are as under: -

- i) It is seemingly very strange that as per FIR, the complainant who is an Excise Inspector had some spy knowledge about the applicant / accused as being involved in selling charas and heroin; but instead of engaging any private party to act as a customer for purchasing the said drug from the accused, the complainant along with Excise Constable(s) directly introduced themselves as police officials and thereafter purportedly searched the applicant and recovered plastic bags containing alleged packets of charas and heroin. Ordinarily, this may not have had an effect; however, the accused is an ex-police official and has pleaded victimization; hence, at this stage of the case, this cannot be ignored out rightly.

- ii) On the same footing, it is also very difficult to grasp at this stage of the case that despite having spy information regarding the alleged activities of the applicant / accused, and even after calling the spy to accompany them at the alleged place of incident, no efforts seems to have been made to engage any private or independent mashir / witness, and instead all subordinate staff of the complainant accompanied him acting as witnesses.
- iii) And this was not enough, then the Complainant has himself become the Investigation Officer. Though there is no legal bar on this; however, propriety demands that a complainant should not act as an Investigation Officer as it is beyond imagination that the complainant would collect evidence against his own case and would naturally act in a manner, which would be prejudicial to the interest of the accused, as well as against the norms and principles enunciated for proper dispensation of justice. Reliance in this regard may be placed on the case of ***Nazeer Ahmed V/s The STATE (PLD 2009 Karachi 191)***
- iv) It further reflects from the FIR, mashirnama and 161 Cr.P.C. statements, that the time of occurrence of the alleged incident in the body of these documents is 2305 hours on 5.2.2020, whereas, on the FIR and the mashirnama it is mentioned as 2340 hours. Though it may not have that damaging effect on the prosecution's case as contended by the learned APG; however, as noted hereinabove, the possibility of implicating an ex-police official in the above manner due to personal grudge cannot be ruled out. Therefore, this aspect also supports the case of the applicant of being that of further inquiry.
- v) It has been contended by the learned APG that the applicant is also involved in another crime of similar nature; hence, not entitled for bail. Again I am not impressed with such line of argument, as the said case is

pending and the applicant has not yet been convicted; therefore, this cannot be a valid ground to deny bail if otherwise a case is made out.

In view of hereinabove facts and circumstances of the case, there are sufficient grounds for further enquiry and the case of the applicant / accused falls within section 497(2) Cr. P.C.; consequently, the applicant / accused has made out a case for admission to bail and is accordingly admitted to bail on his furnishing surety in the sum of Rs. 50,000/- (Fifty Thousand Only) with P.R. bond in the like amount to the satisfaction of the Trial Court. It is needless to state that the observations hereinabove are tentative in nature and shall not affect the trial which is to be proceeded in accordance with law.

**J U D G E**

Arshad/