

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. B.A. No.S- 923 of 2020

DATE

ORDER WITH SIGNATURE OF JUDGE

1. For orders on office objection.

2. For hearing of main case.

21.10.2020

Mr. Shabeer Hussain Memon, Advocate for the applicant.

Ms. Sobia Bhatti, A.P.G, Sindh.

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**ZULFIQAR AHMAD KHAN, J.**-Through instant application, Applicant seeks his admission on post-arrest bail in Crime No.2 of 2020, registered at Police Station Excise Narcotics Control Circle Kotri, under section 9(C) Control of Narcotic Substances Act, 1997. Earlier bail plea preferred by the applicant was accepted on merits by means of order dated 07.09.2020, passed by learned Special Judge (N) / Model Criminal Trial Court, Jamshoro at Kotri.

2. Facts of the prosecution case in brief, are that complainant AETNCO Syed Aijaz Ali Incharge Excise Taxation and Narcotics Control Circle Kotri has lodged the F.I.R. on 12.05.2020 at 06:30 p.m stating therein that applicant was arrested at 05:30 p.m. from Pathan Colony Street near Bareja Chowk and was found in possession 2000 grams of charas with cash of Rs.800/-. Thereafter, mashirnama of arrest and recovery was prepared and arrested accused alongwith recovered property were brought at Police Station where F.I.R. was registered.

3. Heard arguments and perused record.

4. It appears that initially on the application moved on behalf of the applicant who is accused of the afore-mentioned F.I.R., the learned trial Court granted post-arrest bail in his favour and he was accordingly released from the jail after furnishing requisite surety; however, as evident from the order passed by the trial Court dated 07.09.2020, the applicant after releasing on bail did not attend the trial of the case. On 21.07.2020, the application moved on his behalf for whereby he sought excuse for his absence, was dismissed. Thereafter, on 07.09.2020 the applicant was again absent; resultantly, the bail

of the applicant was cancelled and surety furnished on his behalf was also forfeited. Afterwards, applicant appeared before the trial Court on 08.08.2020 and filed application under section 498 Cr.P.C. for grant of pre-arrest bail in the said crime on the ground that since he was suffering as suspected patient of COVID-19, therefore, he could not appear before the Court. However, no medical certificate in support of his aforementioned submission was produced, hence the application u/s 498 Cr.P.C. was dismissed and applicant was taken into custody and remanded to jail. Later on, applicant moved another application under section 497 Cr.P.C. for grant of post-arrest bail, which met with same fate. Thereafter, applicant has approached this Court through instant bail application.

5. Since applicant was granted bail on merits; however, he jumped over such concession on the ground he was fallen ill and remained as suspected case of COVID-19 and since 26.08.2020, is in custody, hence has sufficiently been punished for remaining absent from the trial Court. I am of the view that the learned trial Court has jumped to the conclusion qua the abscondence of the petitioner without observing required procedure inasmuch as there is no report as to why the warrants of arrest against the petitioner issued were not executed. In these circumstances, the impugned order of the learned trial Court whereby bail of the petitioner was recalled is not justifiable in law. Considering all these circumstances, instant application is allowed. The applicant be released on furnishing fresh surety in the sum of Rs.50,000/- (Rupees fifty thousand only) and P.R Bond in the like amount to the satisfaction of the trial Court.

6. It is clarified that if the appellant or anyone acting on his behalf is, in any way, delays the conclusion of trial, the other side (State or the complainant) shall be at liberty to file an application for cancellation of bail granted to the applicant.

JUDGE