ORDER SHEET
IN THE HIGH COURT OF SINDHCIRCUIT COURT
HYDERABAD

Criminal Bail Application No.S-84 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGE

For orders on office objection.
For hearing of main case.

21.02.2020

Mr. Muhammad Hussain Khan advocate for applicant.

Ms. Safa Hisbani A.P.G. Sindh along with ASI Muhammad Ramzan complainant of the case.

KHADIM HUSSAIN TUNIO, J:- Through instant bail application, the applicant Zabihullah seeks post arrest bail in crime No.256/2019, registered at PS Airport/A-Section, Hyderabad for the offence under section 9 (c) CNS Act, 1997. Applicant approached the learned trial Court with similar plea which has been declined by learned IIIrd Additional Sessions Judge/Special Judge for CNS, Hyderabad vide order dated 14.01.2020.

2. Precisely, facts of the prosecution case as unfolded in the FIR are that police party of police station Airport/A-section Hyderabad headed by ASI Ramzan Khaskheli on 13.12.2019 secured 2000 grams of chars and four grams of addictive ice from the applicant, for which FIR was lodged.

3. Learned counsel for the applicant has contended that applicant/accused is innocent and has falsely been implicated by the police; that the place of recovery of narcotics is thickly/densely populated area but the police has not made mashir from public; that non-association of public mashirs by the police in the recovery proceedings has infringed the provision of section 103 Cr.P.C.; that the complainant/ASI stated in FIR that he is posted at PS A-Section, Latifabad, Hyderabad whereas in challan sheet, he has stated that he is posted at P.P. Airport;

that the investigation is complete and applicant/accused is no more required for further investigation. He prayed for grant of bail to the applicant/accused. Lastly, he has relied upon the case law reported as ***1997 SCMR 947, 2008 MLD 1333, PLD 2009 Lahore 362*** and ***2014 MLD 1323***.

4. Conversely, learned A.P.G. for the State has vehemently opposed the grant of bail to the applicant/accused while arguing that the applicant is habitual offender and five cases of like nature are already pending against him.

5. I have heard the learned counsel for the applicant, learned A.P.G. for the State and have perused the material available on record.

6. From perusal of the record, it transpires that the applicant has been specifically named in the FIR. It also appears that while police was on patrolling duty, apprehended the applicant/accused and secured 2000 grams of chars and four grams of addictive ice from his exclusive possession. It is well settled law that at bail stage, deeper appreciation of evidence cannot be gone into and only it is to be seen as to whether applicant is *prima facie* connected with the commission of offence or not. From the perusal of record, it appears that version of complainant has been fully supported by the PWs in their 161 Cr.P.C. The chemical examiner's report is in positive. As far as the plea of the learned counsel regarding violation of section 103 Cr.P.C. is concerned, such plea carries no weight as it is well settled law that police officials are as good as private witnesses. The Control of Narcotic Substance Act, 1997 is a special enactment, the application of section 103 Cr.P.C. has been specifically excluded by virtue of section 25 of the CNS Act, 1997 and, therefore, bail could not be granted on account of non-association of private witnesses. As far as the learned counsel referred the case of 'Ghulam Murtaza and another' [supra], the

Honourable Supreme Court in the case ***of 'Socha Gul v. The State'*** reported in 2015 SCMR 1077, has held as follow:-

> *"8. It is pertinent to mention here that offences punishable under C.N.S. Act of 1997 are by its nature heinous and considered to be the offences against the society at large and it is for this reason that the statute itself has provided a note of caution under section 51 of C.N.S. Act of 1997 before enlarging an accused on bail in the ordinary course. When we refer to the standards set out under section 497, Cr.P.C. for grant of bail to an accused involved in an offence under section 9(c) of C.N.S. Act of 1997, even on that basis we find that an accused charged with an offence, prescribing various punishments, as reproduced above, is not entitled for grant of bail merely on account of the nature or quantity of narcotic substance, being four kilograms. Firstly, as deeper appreciation of evidence is not permissible at bail stage and secondly, in such situation, looking to the peculiar features and nature of the offence, the trial Court may depart from the normal standards prescribed in the case of Ghulam Murtaza (supra) and award him any other legal punishment. Thus, in our opinion, ratio of judgment in the case of Ghulam Murtaza (supra) is not relevant at bail stage."*

7. Similar view was taken by the Hon'ble Apex Court in the unreported case of ***The State v. Ahmed Faraz*** in ***Criminal Petition No. 41-K of 2018***, wherein it has been held that:-

> *"In the instant case, there is no denial that the respondent is not the first offender and there are seven FIRs registered against him; secondly, the application of section 103 Cr.P.C* ***has been specifically excluded*** *by virtue of Section 25 of the CNS Act, 1997 and, therefore,* ***bail could not have been granted on account of non-association of private witnesses*** *and lastly, it has been settled in number of cases that the case of Ghulam Murtaza (supra), whereby sentencing policy on recovery of different quantity of contraband has been prescribed cannot be made applicable at bail stage. We, in the circumstances, convert this petition into appeal and allow the same. As a consequence, the impugned order dated 2.2.2018 passed by the High Court is set aside and the concession of bail stands recalled."*
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> ***(Underlined by me for emphasis)***

8. Learned counsel for the applicant/accused has failed point out any enmity with the complainant or PWs for his false implication in the instant case. The instant offence is punishable for death or imprisonment for life or imprisonment upto fourteen years, which does not fall within the ambit of prohibitory clause of section 497 Cr.P.C. In this regard, I am fortified with the observations made by the Hon'ble Supreme Court in the case of ***'Dolat Khan v The State and others'*** 2016 SCMR 1447, which is reproduced as under:-

> ***The petitioner was apprehended at the spot by the raiding party*** *and as per the FIR he himself handed over two Nos. packets containing Charas and opium to the complainant (SI).* ***Learned counsel for the petitioner has not been able to refer to anything from the record which could suggest that the complainant or any other member of the raiding party had any animus against the petitioner. The case of the petitioner falls within the prohibitory clause of section 497 of the Code of Criminal Procedure.*** *In this view of the matter coupled with the fact that huge quantity of narcotics has been recovered from his possession, petitioner is not entitled for the concession of bail."*
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> ***(Underlined by me for emphasis)***

9. In view of the position discussed above, I am of the humble opinion that *prima facie* the applicant has failed to make out a case for further inquiry as contemplated under section 497 (2) Cr.P.C., therefore, at this stage, the applicant is not entitled for concession of bail. Consequently, instant criminal bail application is **dismissed.**

10. Learned trial Court is directed to proceed with the case expeditiously within a period of six months fully in accordance with law on merits under intimation to this Court.

11. Needless to mention here that whatever is stated hereinabove being tentative in nature shall not prejudice the case of either party at the time of trial.

JUDGE

Abdullah Channa/PS