

**ORDER SHEET**

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

***Cr. Bail Application No. S – 624 of 2019***

DATE	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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**For hearing of bail application**

**02.12.2019**

Ms. Rubina K.Durrani Advocate for the Applicants  
Mr. Aftab Ahmed Shar, Additional PG for the State

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**Aftab Ahmed Gorar, J;** Through instant Criminal Bail Application, the applicants / accused Shahid Hussain S/o Sadique Hussain Rajput and Zakir Durrani S/o Mubarak Durrani, seek post-arrest bail in Crime No.02 of 2019 registered at Excise Police Station Ghotki for offence punishable under Sections 6, 9(c) Control of Narcotic Substances Act,1997.

2. The facts of the prosecution case, in brief are that on 03.8.2019 at 1500 hours, ENI Hassan Ali Dashti on behalf of State lodged report at Excise Police Station Ghotki, stating therein that on the date of incident, he along with his subordinates EC-Liaquat Ali, EC-Saifullah, EC-Abdul Jabbar, EC- Zulfiqar Ali and EC- Allahdino, were on checking of the Narcotic at Sindh-Punjab Border. It was about 1:00 pm, they saw a Hilux Toyota Double Door coming from Punjab side, they suspected it and got stopped and found the Registration No.CJ-1120 including driver two persons were sitting on the front seat, they were got alighted and on enquiry they disclosed their

names as Shahid Hussain, resident of Lahore, whereas, second person disclosed his name as Zakir Durrani resident of New Karachi, hence EC Liaquat Ali and EC Saifullah were appointed as mashirs, they were searched. It is further stated that from personal search of Shahid Hussain five currency notes of Rs.500/- each total Rs.2500/- and his identity card were secured, whereas, from Zakir Durrani three currency notes of Rs.1000/- each total Rs.3000/- and his original CNIC were secured. Thereafter the vehicle Toyota Hilux Double Door was searched, from the front tool box the registration book of the vehicle in the name of Muhammad Khan resident of Peshawar, whereas, in the rear floor of the vehicle one secret cavity was made, which was opened, containing multi-coloured plastic bags, which were taken out, containing contraband Charas, the total packets were counted which were 60 in number each packet was weighing one kilogram the total weight of the charas became 60 kilograms. Out of each packet, 200 grams were segregated for chemical analysis whereas the remaining contraband was sealed separately. Then the chassis and engine number of the vehicle were noted as LN-1070018792 and 3L-3586880. Thereafter such mashirnama was prepared in presence of the mashirs and then the apprehended accused along with the recovered contraband Charas and vehicle were brought at Excise Police Station Ghotki, hence such FIR was lodged.

3. The applicants / accused preferred their Bail Application bearing No.895/2019 before the Court of learned Sessions Judge /

Special Judge (CNSA) Ghotki, which was dismissed vide order dated 06.08.2019, whereas, on transfer of the case to the Court of learned 1<sup>st</sup>. Additional Sessions Judge / MCTC Ghotki, and after issuance of the final Chemical Report as well as report under Section 173 Cr.P.C, the applicants / accused preferred their second bail application No.1038/2019 which was also dismissed, hence this application before this Court.

4. Learned counsel for the applicants / accused contended that the case is false and the alleged contraband charas has been foisted upon them, as they were travelling in a rented Car and they were stopped by the Excise Police Ghotki, whereas one double cabin vehicle was already stopped by the police in which two person were sitting, whereas, police tried to extort money from the applicants / accused hence on refusal they were booked in the present case; that no independent eyewitness of the scene was associated as mashir of arrest and recovery though the alleged place of recovery is National Highway, which remains always busy; that the contents of FIR do not disclose the quantity of alleged recovered charas; that nothing has been recovered from the physical possession of the applicants / accused; that the alleged vehicle was not in the name of the present applicants / accused, hence she prays that under the above circumstances, the applicants / accused are entitled for grant of bail, as the case requires further inquiry. In support of her contentions, she has relied upon the cases of ***Syed Ghulam Mustafa v. The State (2007 P Cr. L J 139)***,

***Muhammad Aslam (Amir Aslam) and others v. District Police Officer Rawalpindi and others (2009 SCMR 141), Muhammad Ullah v. The State (2009 SCMR 954), Alamgir v. The State (2010 Y L R 245), Amjad Ali v. The State (2012 SCMR 577), Ayub Khan v. The State (2012 Y L R 1015), Ali Asghar v. The State and others (2016 M L D 621) and Taiz Ali v. The State (2018 P Cr. L J Note 30).***

5. Learned Additional PG has vehemently opposed for grant of bail to the applicants / accused by contending that a huge quantity of 60 kilograms charas has been recovered from the present applicants / accused and the police officials being eyewitnesses/Mashirs are as good as other private persons; whereas, the report of the Chemical Examiner is positive, hence the applicants / accused are not entitled for grant of bail.

6. I have heard the learned counsel for the applicants / accused and learned Additional P.G for the State and perused the record. On tentative assessment of the entire material available on record, it appears that the applicants / accused were stopped by the Excise Police Ghotki on Sindh-Punjab Border when they were travelling in a double cabin vehicle and on the search from the secret cavity of the said vehicle 60 kilograms of Charas was recovered. Apparently, no enmity of whatsoever has been alleged by the applicants / accused against the Excise Police officials for their false implication in this case by foisting a huge quantity of Charas. Perusal of FIR reflects that due to non-availability of private persons the complainant

appointed two Excise police constables as mashirs. Even otherwise, in view of Section 25 of Control of Narcotic Substances Act, 1997, the application of Section 103 Cr.P.C is excluded in narcotic cases. The offence with which the applicants / accused have been charged entails capital punishment, hence falls within the ambit of prohibitory clause of Section 497 Cr.P.C. In this regard, I am fortified from the dictum laid down in the case of **Socha Gul v. The State (2015 S C M R 1077)**, wherein it has been held by Honourable Apex Court as follows;

*“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. So far as the case-law cited by learned counsel for the applicants / accused, I am of the humble view that the same are not applicable in the case in hand being on distinguishable facts and circumstances. Since a huge quantity of 60 kilograms of contraband charas has been recovered from the possession of the applicants /accused, prima-facie, there appears no reasonable ground for believing that the applicants / accused have not committed the offence under Sections 6 & 9(c) Control of Narcotic Substances Act, 1997. Therefore, the bail application merits no consideration and it is dismissed accordingly. The observations made herein above are tentative in nature and will not prejudice the case of either party at trial.

Judge

ARBROHI