

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**  
**Crl. Bail Application No. S- 762 of 2016**

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.
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For Hearing.

M/s Qurban Ali Malano and Abdul Baqi Jan Kakar Advocates for applicants/accused.

Mr. Ubedullah Malano, S.P.P for the State/ANF.

Date of hearing: 31-05-2017

**J U D G M E N T**

**MUHAMMAD SHAFI SIDDIQUI J.**, Applicants Mujahid Hussain and Ghulam Nabi have preferred this bail application in respect of an offence under section 9-C of CNS Act, 1997, arising out of crime No. 13 of 2016, P.S, A.N.F, Sukkur.

2. The allegations against the applicants are that on 06.08.2015, around 1530 hours, they were apprehended by Anti-Narcotics Force consisting of SIP Nooruddin, Inspector Asim Raza, Hawaldar Roohuddin, Shoukat Ali Qazi, P.C Sajid and other staff of P.S, ANF, Sukkur in official uniform. They claimed to have recovered 3.5 KGs of Charas in the shape of different sizes from accused Mujahid Hussain and 1500 grams from the possession of accused Ghulam Nabi. Mashirnama was prepared in presence of P.C. Shoukat Ali and P.C. Sajid Iqbal and accordingly FIR was lodged for offence punishable under section 9-C of the CNS, Act, 1997.

3. I have heard learned counsel and perused the material available on record and so also Chemical Report, copy of which is placed by learned SPP for the State. The contents of FIR shows that alleged contents contained in black shopper, wrapped and sealed separately in white color cloth alongwith same black colour shopping bag were sent for chemical analysis after delay of about 02-months & 06-days, however, Chemical Report does not suggest that samples were drawn from each piece of alleged Charas.

4. In case of **GHULAM MURTAZA and another v. The STATE (P L D 2009 Lahore 362)**, imprisonment for contraband weighing in between 3 Kg to 4 Kg would entail to 6-years and 6 months and fine of Rs. 30,000/-, whereas, imprisonment for contraband recovered in between 1 Kg to 2 Kg, would entail to 4-years and 06-months and fine of Rs. 20,000/-

5. In case of **Jamal-ud-Din alias Zubair Khan v. The State (2012 S C M R 573)**, the Hon'ble Supreme Court held that court while hearing petition for bail was not to keep in view maximum sentence provided by the Statue but the one which was likely to be entailed in the facts and circumstances of the case.

6. Considering the point that all pieces of Charas claimed to have contained in the black bag have not been separately and independently analyzed, would be a question that requires determination. There is also apparent contradiction in the contents of FIR as well as in the report of Chemical Examiner. The contents of FIR shows that recovered Charas was

sealed separately in white coloured cloth alongwith same black shopping bag for chemical analysis, whereas, in the description of Chemical Examiner shows that contents were contained in one black plastic shopping bag. Samples of alleged Charas were not dispatched to the Laboratory for opinion within 72 hours, which is in violation of Rule 4(2) of Control of Narcotics Substances (Government Analysts) Rules, 2001, whereas, in the instant case alleged contraband items were received by Chemical Laboratory after about 02-months and 06-days of delay i.e. 12.10.2015. Furthermore, it has also not been disclosed in the FIR as to where complainant party weighed alleged contraband item or that they have taken measurement scale or measurement tool with them. FIR is absolutely silent in this regard.

7. In view of above facts and circumstances, it is a case of further enquiry and hence applicants were extended bail concession subject to furnishing surety, as mentioned in short order dated 31.05.2017. These are the reasons of short order.

**JUDGE**

Ahmad