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ORDER SHEET  
IN THE HIGH COURT OF SINDH CIRCUIT COURT, LARKANA.  
Cr. Bail Appln. No.S- 170 of 2013.

Dated \_\_\_\_\_ order with signature of hon'ble Judge.

1. For order on office objection as flag A.
2. For Hearing.

24.07.2013.

Mr. Rashid Mustafa Solangi, advocate for the applicant.  
Miss Shazia Surahio, State Counsel.

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Through instant application, the applicant <sup>Mashooque</sup> ~~Mushiaq~~ Detho seeks post arrest bail in Crime No. 54/2013 of P.S Kamber U/S 9(c) of CNS Act, 1997.

2. Precisely, the relevant facts are that complainant on receiving a tip-off that two accused one male and one female, boarded in a car, having contraband charas, coming from Larkana. Complainant along with witnesses proceeded towards the pointed place and captured same car and found one male and one female person boarded therein. Finding them suspect, interrogation was conducted; during interrogation and search, recovery of 2 k.gs charas from applicant and 1500 grams charas from accused Sakina was effected; out of them 200 grams was separated for chemical examination; accused and property were brought at police station and they were booked in above crime. After usual investigation, both accused were sent up for trial before the concerned Court.

4. Learned counsel for the applicant, *inter-alia*, contended that co-accused Mst.Sakina, from whom recovery of 1500 grams charas was effected, has been granted bail by this Court

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vide order dated 24.05.2013; despite prior information police officials have not associated the independent witnesses from the vicinity, which is situated in thickly populated area; 200 grams charas separated for chemical examination was sent to the chemical examiner with the delay of 8 days which is not explained hence it creates reasonable doubt in the prosecution case. He further contended that offence took place on 19.03.2013 whereas in newspaper Daily Kawish news was flashed regarding the arrest of applicant and lady accused and it was contended that, in fact, arrest was made three days prior to 20.03.2013. In support of his contention he has relied upon un-reported case bearing Cr.B.A. Application. No.954/2010.

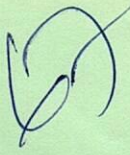

5. Conversely, learned State Counsel while refuting the claim of applicant's counsel argued that instant crime is against society and the recovery was effected from the applicant thus applicant is not entitled for bail.

6. After careful consideration of the contentions raised by the learned counsel for the respective parties and scanning of the material brought on record. It is not disputed that despite prior information to the complainant with regard to the instant crime, he has not joined any independent person as witness and delay of eight days while sending the property for chemical examination is not explained. Moreover, it has come on record that news was flashed in daily Kawish, wherein it was reported that two person's one male and one lady were arrested three days prior to 20.03.2013. Learned counsel has relied upon an unreported bail order passed in Cr.Bail Appln.No.954/2010 whereby in similar circumstances bail was granted. According to said dictum it is held as under:-

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"Whereas in all the three FIRs No.266/2010, 267/2010 and 268/2010 the time of incident allegedly has been shown as 4.30 a.m and it is not possible that an incident took place on 4.30 p.m on 17.09.2010 FIR has been registered between 6.30 a.m on 17.9.2010 and the news of that incident appears in any newspaper the same day i.e. 17.09.2010 in the three leading morning Sindhi newspapers as stated above. These facts clearly establishing that the applicant was arrested on 16.9.2010 but the police have booked the applicant in all these FIRs No.266/2010, 267/2010 and 268/2010 showing incident took place on 17.09.2010. From the facts and contentions raised by the learned counsel for the applicant, prima facie it seems that the applicant had been detained before he is alleged to have been arrested with the recovery of Kalashnikov was made. Hence case of the prosecution is of further inquiry."

Further in the case of Ghulam Murtaza and another v. The State reported in PLD 2009 Lahore 362, a policy has been laid down wherein a chart is provided regarding quantum of sentence with regard to the nature of contraband narcotic substances. It will be conducive to refer the relevant portion of the said judgment:-

*"It is conspicuously noticeable that the sentences provided for by the Control of Narcotic Substances Act, 1997 are prescribed with reference to quantity of the recovered contraband narcotic substance and not with reference to the kind or nature of the recovered contraband narcotic substance. Different kinds of contraband narcotic substances covered by the Control of Narcotic Substances Act, 1997 vary sharply in their harmful nature or dangerous effects as a huge quantity of one substance may be less harmful or dangerous than a small quantity of another substance. Thus, in many situations a sentencing approach based only upon quantity of the recovered substance may lead to unjust and oppressive results and to punishments which may be unduly cruel and harsh."*

According to said policy, in the instant case, maximum punishment is provided for four years and six months hence same does not fall within prohibitory clause of subsection (1) of section 497 Cr.P.C. Besides, prosecution has not placed any record criminal with regard to the involvement of applicant in similar type of cases; and co-accused is already granted bail by this court

7. keeping in view the given circumstances, the applicant has succeeded to bring his case within scope of further inquiry. Thus, he is admitted for post arrest bail, subject to furnishing solvent surety in the





sum of Rs.100,000/= and P.R bond in the like amount to the satisfaction  
of trial Court.

  
JUDGE

shabir