

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
LARKANA

Crl. B.A No. S- 317 of 2018

DATE

ORDER WITH SIGNATURE OF JUDGE

Mr. Saeed Ahmed Bijarani, advocate for applicant
Mr. Sharafuddin Kaanhar, A.P.P. for the State

Date of hearing and order: 03.09.2018

ORDER

ZAFAR AHMED RAJPUT, J:- Through instant Criminal Bail Application under Section 497, Cr.P.C., applicant/accused Dilaram s/o Khyber seeks post-arrest bail in Crime/F.I.R No. 01 of 2018, registered at Excise & Narcotics DIO Camp, Kashmore, under section 9 (c) of the Control of Narcotic Substances Act, 1997 (herein after referred to as the ("Act of 1997")). Earlier to it, application for grant of bail moved by the applicant being Special Bail Application No. 39 of 2018, was dismissed by the learned Special Judge CNS, Kashmore at Kandhkot, vide order dated 13.06.2018.

2. Briefly stated facts of the case are that on 20.05.2018, at 11:45 a.m., Excise & Narcotics Inspector Aamir Khan Kalwar of DIO Camp Kashmore lodged aforementioned F.I.R. on behalf of the State alleging therein that on receiving spy information, he left DIO Camp along with his sub-ordinate staff and reached Highway near Anaj Mandi, Kashmore where at 11:45 a.m. he got a coach stopped and recovered a bag lying under the feet of applicant. He obtained key from the applicant and on opening it found the same containing three packets of charas which was on being equalized came to three K.Gs., out of which 500 grams from each packet was sealed separately for chemical analysis. Such Mashirnama was prepared at the spot and, thereafter, the applicant along with case property was brought at E & N, DIO Camp Kashmore, where case was registered against him.

3. Heard the learned counsel for the applicant and A.P.G., as well as, perused the material available on record.

4. Learned counsel for the applicant has contended that the applicant is innocent and has falsely been implicated in the case; that both the mashirs being police officials are interest witnesses and despite availability of driver, conductor and other passengers in the coach, Excise police failed to associate any private person to witness the alleged recovery of contraband, hence provision of 103 Cr.P.C. has been violated; that neither any bag nor charas was recovered from the physical possession of the applicant and the same have been planted upon the applicant; that only the property sent for chemical analysis is to be considered for the purpose of trial and bail and in the case in hands only 1500 grams contraband was sent to chemical analysis, which is the case of boarder line in between 9-B and 9-C of the Act of 1997, as such, the alleged offence does not come within the prohibitory clause of section 497 Cr.P.C; In support of his contentions, learned counsel has placed his reliance on the case of *Chuncha Gul v. The State* (2008 Y.L.R. 385) and *Muhammad Essa v. The State* (PLD 2008 Karachi 112).

5. Conversely, the learned A.P.G. while opposing the grant of bail to applicant has maintained that a huge quantity of charas has been recovered from the bag of the applicant lying under his feet while travelling in a coach; that no animosity with the complainant and mashirs has been pleaded by the applicant and the prosecution's witnesses have fully implicated the applicant in their statements recorded under section 161, Cr. P.C.; that the representative samples of the case property was sent promptly for chemical analysis and no case for grant of bail has been made out by the applicant.

6. The applicant is facing charge of possessing 3 kilograms charas. The punishment provided under clause (c) of section 9 of the Act of 1997 is

possessing narcotic drug, psychotropic substance or controlled substance, exceeds from 1 kilogram, is either for death, imprisonment for life or for a term which may extend to fourteen years with fine, which may be up to one million rupees. Section 51 of the Act of 1997 deals with the restriction for grant of bail in respect of certain offences. It is divided into two parts, under first part the accused is not entitled to be released on bail, if he is involved in an offence punishable with death and the provisions of section 496 and 497, Cr. P.C. have been specifically excluded. Under second part if accused is involved in an offence which is punishable with less than death, he is not normally required to be released on bail unless the Court is of opinion that it is a fit case of grant of bail subject to condition of furnishing security of substantial amount. Under this part, the application of provisions of section 496 and 497, Cr. P.C., are not excluded. However, it is also a celebrated principle of law that when a case against the accused is of further enquiry then the embargo contained in section 497, Cr. P.C. barring grant of bail to the applicant does not apply. On the same analogy the bar contained in the section 51 of the Act of 1979 would not be applicable in a case of possession and recovery of narcotics if the evidence in possession of the prosecution prima facie does not make out a case punishable with death.

7. Looking to the case of the prosecution against the applicant, I find that prima facie 3 kilograms charas has been recovered from the bag lying under the feet of applicant while travelling in a coach and the same was opened with the key, which was in possession of applicant. Complainant Inspector has also secured ticket of the coach from the applicant. The representative sample i.e. 500 grams charas from each packet, total 1500 grams, was sent to chemical examiner on very next day of the alleged recovery and his report in this regard is "Positive". Since 500 grams charas from each packet was sealed separately and sent for chemical analysis, the same are "representative samples" of whole

charas and thus contentions of learned counsel for the applicant that it is case of boarder line is of no weight.

8. I am not persuaded by the arguments of learned counsel for the applicant for grant of bail. For the reasons, the applicant has failed to bring any evidence on record showing his previous animosity with the complainant. The contention of leaned counsel with regard to the non-compliance of section 103, Cr. P.C. is also misconceived for the reasons that section 25 of the Act of 1997 has categorically excluded the application of section 103, Cr. P.C. to the searches made under the Act of 1997 and in presence of a special law regarding the search, general provisions would not prevail.

9. The applicant has been found in possession of a huge quantity of charas, which can have devastating effect on the society and from the tentative assessment of evidence; the case of applicant does not call for further enquiry as envisaged under sub-section 2 of section 497, Cr.P.C. The case-law cited by the learned counsel for the applicant being distinguishable on law and facts does not attract to the case of applicant. I, therefore, dismiss this Criminal Bail Application.

10. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicant on merits


JUDGE