

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT HYDERABAD**

Before:

Mr. Justice Mohammad Karim Khan Agha

Cr. B.A. No.S-882 of 2016.

Rustam Ali

Versus.

The State.

Applicant : Rustam Ali	Through Nandan A. Kella, Advocate.
Respondent : the State	Through Mr. Shahid Ahmed Shaikh, A.P.G.
Date of hearing	05.04.2017.
Date of order	06.04.2017.

ORDER

MOHAMMAD KARIM KHAN AGHA, J.-Through instant application, applicant seeks post arrest bail in Crime No.32 of 2016, registered at Police Station Mehran District Mirpurkhas, under section 9(c) of Control of Narcotic Substances Act, 1997 (CNSA).

2. Precisely relevant facts are that on 16.08.2016, complainant / SIP Abdul Ghafoor alongwith his subordinate police officials while patrolling in his jurisdiction reached at Kori Goth link road and after a brief chase stopped the applicant while he was driving a car and upon his personal search as well as the said car, recovered 4.0 kilograms of charas. Thereafter, the recovered narcotic was sealed for chemical examination. The case property and the applicant were brought at Police Station. FIR was registered against the applicant and after usual investigation he was sent up for trial.

3. Learned counsel for the applicant inter alia, contended that he was innocent of any offense and has been falsely implicated by the police who have foisted the case on him; that he could not be detained

on mere allegations; that his case fell within the non prohibitory clause as per the sentencing guidelines laid down in **Ghulam Murtaza's case** (PLD Lahore P.362) and as per S.9© CNSA which laid down that the sentence could be up to 14 years; that all prosecution witnesses are police personnel; that recovery allegedly effected from the applicant is charas and not heroin; that the applicant has no previous criminal record; since last around 07 months the applicant is in jail and he is not further required for any investigation; that the chemical test and report has not been carried out in accordance with the Control of Narcotic Substances (Government Analysts) Rules 2001 (the Rules) and for all the above reasons he is entitled to be enlarged on bail.

4. In support of his contentions, learned counsel for the applicant relied upon the cases of **Ikramullah and others v. The State** (2015 S C M R 1002), **Shahid V State** (2013 Y L R 1840) **Ghulam Murtaza and another v. The State** (P L D 2009 Lahore 362) and the Rules

5. Learned A.P.G. for the State opposed this bail application on the ground that the applicant is involved in heinous offence which is a crime against society; that a large recovery of 4 KG charas had been made from the applicant and in the car which he was driving; that the chemical report was positive and had been carried out as per the Rules; that the case fell within the prohibitory clause; that no allegation of malafide had been made against the police and that there was more than sufficient material to connect the applicant to the offense for which he had been charged.

6. In support of his contentions, learned A.P.G. relied upon the cases of **Gul Alam v. The State through Advocate General, NWFP, Peshawar** (2009 PSC (Crl.) 600), **Socha Gul v. The State** (2015 S C M R 1077), **Nadeem Ashraf v. The State and others** (2013 S C M R 1538), **Tariq Mehmood v. The State through Deputy Attorney-General Peshawar** (P L D 2009 Supreme Court 39), **The State v. Javed Khan** (2010 S C M R 1989) and S.R.O.810 (I)/2001 of Control of Narcotic Substances (Government Analysts) Rules, 2001.

7. I have heard the learned counsel for the applicants, APG, perused the record, considered the relevant law and the case law cited at the bar.

8. As per settled law I have only made a tentative assessment of the material placed before me and this order shall not prejudice the case of any party at trial which shall be decided by the trial court on merit based on the evidence before it.

9. Firstly I note that the applicant's application for post arrest bail was dismissed by the trial court by order dated 22-09-2016 and hence the applicant has now approached this court for post arrest bail. The applicant has been found in possession of a huge quantity of charas which has been recovered from him and the vehicle in which he was traveling which would attract the provisions of S.6 CNSA; there appears, from the record, to be no mala fide on the part of the police or any reason as to why they would foist the case on the applicant; the chemical report has proved positive; with regard to the procedure in the Rules to carry out the chemical examination within 72 hours I note that this has been complied with. Even otherwise a delay would not be fatal to the prosecutions case as rule 4 which requires the samples to be sent for analysis within 72 hours of the seizure is only directory in nature and as such will not be fatal to the prosecutions case. In this respect reference may be made to the case of **Tariq Mehmood V State** (PLD 2009 SC P.39). It is settled law that at the bail stage only a tentative appreciation of evidence is permissible and not a deeper one as such whether the chemical was sent in conformity with S.36 CNSA can be considered at the trial stage in the light of **Ikramullah's case** (Supra).

10. With regard to the offense falling within the non prohibitory clause I am of the view that the case falls within S.9© CNSA and as per findings of the Supreme Court in the case of **Socha Gul V The State** (SCMR 2015 1077) (which distinguished **Ghulam Murtaza's case** (Supra) in terms of the use of the sentencing guidelines for the grant of bail) and comes within the prohibitory clause and that bail should be granted sparingly in narcotics cases bearing in mind S.51 CNSA and the fact that as per **Socha Gul's case** the offense amounts to a crime against society. Further support for this proposition can also be found in the cases of **The State v. Javed Khan** (Supra) and **Nadeem Ashraf's case** (Supra). Furthermore, it would appear that **Socha Gul's case** (Supra) has overruled cases such as **Shahid V State** (Supra) relied upon by the applicant where by the Court was to take into account the likely sentence to be handed down on conviction based on

the quantum of contraband recovered at the time when bail was being considered.

11. In this case a large amount of Charas (4KG's) has been recovered from the applicant and his vehicle; the chemical report has proved to be positive; the case falls within the prohibitory clause and prima facie there is sufficient material to connect the applicant to the offense for which he is charged and thus I hereby dismiss his bail application.

12. However, I note that the applicant has been in custody for around 7 months and that the charge has been framed against him and one PW out of four has already given evidence and as such I direct the trial court to decide this matter within 3 months of the date of this order. The office is directed to immediately send a copy of this order to the concerned trial court for compliance.

13. The bail application stands disposed of in the above terms.

Hyderabad

Dated:06.04.2017.