

**IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA*****Criminal Bail Application No.S-175 of 2017***

Zahid Ali ----- Applicant.

Versus.

The State ----- Respondent

Date of hearing : **05.6.2017**

Mr. Habibullah G. Ghouri, Advocate for Applicant.

Mr. Aijaz Mustafa Samtio, DDPP for State.

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**ORDER**

ADNAN-UL-KARIM MEMON,J: The applicant namely Zahid Ali is seeking post arrest bail in Crime No.7/2017 registered for offence punishable under section 9 (c) of Control of Narcotic Substances Act, 1997 at Police Station Waleed, Larkana.

2. On 18.1.2017 at about 1730 hours ASI Ali Hassan Magsi lodged FIR against the Applicant with respect to the alleged incident that took place on the same day that is, 18.01.2017.

3. The gist of allegations against the Applicant are that on 18.01.2017 at about 1645 hours ASI Ali Hassan Magsi of Police Station Waleed, Larkana along with his subordinate staff PC Imtiaz Ali, PC Junaid Ahmed were patrolling. When they reached Ghar Wah Bridge near Lahori Regulator one person on seeing the police party attempted to retract back. The police party suspected and inquired from the Applicant about his identity who disclosed his name to be one Zahid Ali son of Muhammad Aslam Chandio, resident of village Lahno Samtio, Taluka Larkana. The police party arrested the Applicant, searched him and recovered two packets tied with string of his shalwar. The packets were opened by the police party and were found to be containing charas in the shape of patties. Recovered charas was weighed at the spot and was found to be of 2 kilograms as per the Mushirnama. The recovered contraband material was sealed at the spot and taken into custody as sample for the purpose of chemical examination. There is no private

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witness to the said recovery from the Applicant by the police party due to non-availability of any person. The Investigating Officer prepared Mushirnama of place of incident, recorded statements of prosecution witnesses, interrogated the applicant, got conducted chemical examination of recovered contraband material and obtained its report. At the conclusion of investigation the Investigating Officer submitted charge sheet in crime No.7/2017 against the Applicant on 12.02.2017. Applicant moved Bail Application bearing No. 316 of 2017 in above crime before the learned Special Judge, CNS, Larkana, which was dismissed vide order dated 22.03.2017.

4. Mr. Habibullah G. Ghouri, learned counsel for the Applicant has argued that Applicant is falsely implicated in the subject crime by the police with malafide intention by concocting a story due to enmity. He further added that nothing was recovered from the possession of Applicant and alleged recovery of 2 kilograms of charas has been foisted upon the Applicant. He next contended that prior to registration of subject FIR against the Applicant his father was arrested by police illegally. An Application under Section 491 Cr. P. C was moved for recovery of Applicant's father. Resultantly, raid was conducted by learned Magistrate but Applicant's father was not found in custody of police. He next contended that no private witness has been cited to alleged recovery from the Applicant despite the fact that place of incident is a thickly populated area. He next contended that offence is not punishable with death or imprisonment for life which requires further inquiry into the guilt of the Applicant. In support of his contentions learned counsel relied upon the case of Ghulam Murtaza and another v. The State (PLD 2009 Lahore 362) and argued that the punishment provided for the alleged offence is 04 years and 6 months. Therefore, the case of Applicant does not fall within the prohibitory clause of section 497 (1) of Cr. P. C. Learned counsel asserted that the chemical report has been managed by the police. He also relied upon unreported order dated 18.3.2016 passed by this Court in CrI. B. A. No. 33 of 2016.

5. Mr. Aijaz Mustafa Samtio, learned DDPP for the State has opposed the grant of bail and argued that Applicant was arrested at the spot with 2 kilograms of charas recovered from his possession. He next argued that chemical examination Report dated 24.1.2017 supports the prosecution case. He next contended that Applicant has been charged with offence under Section 9 (c) of Control of Narcotics Substances Act, 1997 which is

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of serious nature and falls within the prohibitory clause of section 497 (1) Cr. P. C. He next contended that the prosecution has collected sufficient incriminating evidence against the Applicant and if the bail is granted, the applicant will continue to commit similar criminal activities causing harm to the public at large. He next contended that Prosecution case is fully supported by the statements of the witnesses. Therefore, the Applicant is not entitled to the concession of bail.

6. I have heard learned counsel for the Applicant and learned DDPP for the State, perused the material available on record and case law cited at the Bar.

7. I am conscious of the fact that while deciding a bail application, this court has to consider the allegations made in the FIR, statements recorded under Section 161 Cr. P. C., nature and gravity of charge, other incriminating material against the accused, legal pleas raised by the accused and the relevant law. In this regard, I am fortified by the decision rendered by the Honorable Supreme Court in the case of Shahzad Ahmed versus the State ( 2010 SCMR 1221).

8. Record reflects that Applicant had been arrested red-handed in possession of charas weighing 2 kilograms and chemical examination report supports the prosecution case. The recovery of contraband material was duly witnessed by the police officials who had no ostensible reason to falsely implicate the Applicant in a case of present nature, who are as good witnesses as any other person. Case of the Applicant is hit by prohibition clause contained in section 51 of the Control of Narcotic Substances Act, 1997. So at this stage, there are no reasonable grounds to believe that he is not involved in the alleged offence.

09. Reverting to the plea taken by the learned counsel for the Applicant with respect to the enmity, suffice it to say that the same is a factual controversy and at bail stage only tentative assessment of the record is to be made. The offence falls under section 9 (c) of Control of Narcotic Substance Act, 1997 which is punishable for death or imprisonment for life.

9. The case law cited by the learned counsel for the Applicant is distinguishable from the facts and circumstances of the case in hand.

10. In view of the above facts and circumstances, I am of the opinion that Applicant has not made out a case for grant of bail at this stage.

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Accordingly, the instant bail application is dismissed and above are the reasons of short order dated 05.6.2017.

11. The findings mentioned above are tentative in nature which shall not prejudice the case of either party at the trial stage. However, the learned Trial Court is directed to record evidence of the material witnesses within a period of four months where after the Applicant will be at liberty to move fresh bail application before the learned Trial Court on fresh ground, if any.

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JUDGE

Dated: 6-6-2017.

Abid H. Qazi/\*