

ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA  
Cr. Bail Appln. No.S-287 of 2013.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE.
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06.8.2013.

For hearing.

Mr. Azhar Hussain Abbasi, advocate for the applicant.

Miss Shazia Surahio, State Counsel.

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NAIMATULLAH PHULPOTO, J.- Applicant/accused  
Ghulam Sarwar alias Qali Jatoi seeks post arrest bail in crime  
No.05/2013, registered against the accused on 18.01.2013, at Police  
Station Rustam, District Shikarpur, under Section 9(c) of the Control  
of Narcotic Substances Act, 1997.

2. Brief facts of the prosecution case as disclosed in the  
F.I.R are that on 18.1.2013 SIP Abdul Jabbar Kolachi of PS Rustam  
left police station alongwith his subordinate staff for patrolling  
duty. He received spy information that applicant/accused Ghulam  
Sarwar alias Qali, by caste Jatoi, was carrying a black-coloured bag  
containing charas and was standing at Faizoo Larro to catch a  
bus. On such information, police party proceeded to the pointed place  
and reached there at 1500 hours. Applicant while seeing the police  
party tried to run away but he was surrounded and caught  
hold. Private mashirs were not available, sub-inspector made HC  
Abdul Raheem Bhutto and PC Muhammad Saleh Bhayo as  
mashirs. Applicant/accused disclosed his name as Ghulam Sarwar  
alias Qali son of Abdul Majeed, by caste Dodani Jatoi, resident of

Village Ali Hassan Jatoi, Taluka Khanpur. Plastic bag was recovered from his possession, it contained pieces of the charas. Pieces of the charas were weighed, charas was total 1100 grams. Mashirnama of arrest and recovery was prepared in presence of mashirs, property was sealed, accused and the case property were brought at police station, where sub-inspector lodged the F.I.R against the accused on behalf of State under Section 9(c) of the Control of Narcotic Substances Act, 1997. Charas was sent to the Chemical Examiner for analysis and report. After usual investigation challan was submitted before competent Court of law under the above referred Section.

3. Bail application on behalf of the applicant/accused was moved before the learned Sessions Judge/Special Judge, Narcotics, Shikarpur, it was dismissed by order dated 25.6.2013.

4. Mr. Azhar Hussain Abbasi, learned advocate for the applicant/accused mainly contended that yet it is to be determined at trial whether offence would fall under Section (c) or 9(b) of the Control of Narcotic Substances Act. He has further submitted that the quantum of sentence has to be commensurate with the quantum of substance recovered. Mr. Azhar Hussain argued that applicant/accused is in custody since last 06 months and charas has been foisted upon the accused by the police due to enmity. In support of the contentions he relied upon the case of *Jamal-ud-Din alias Zubair Khan v. The State*, **2012 SCMR 573** and Criminal Bail Application No.S-71/2013 decided by this Court dated 09.5.2013.

5. Miss Shazia Surahio, learned State Counsel, opposed bail application on the ground that 1100 grams of the charas have been recovered from the accused and offence under Section 9(c), C.N.S Act, 1997 is punishable for death or imprisonment for life, or imprisonment for a term which may extend to fourteen years with fine.

6. I am inclined to grant bail to the applicant/accused for the reasons that quantum of the sentence has to be commensurate with the quantum of the substance recovered, I doubt in above stated facts the applicant/accused can be awarded maximum sentence provided by the statute. The Court while deciding the bail application is not to keep in view the maximum sentence provided by the statute but the one which is likely to be entailed in the facts and circumstances of the case. In this case 1100 grams charas have been recovered from the accused. Obviously it is borderline case. Yet it is to be determined at trial whether offence would fall under Section 9(b) or 9(c) of Control of Narcotic Substances Act. 1997. The fact that applicant/accused has been in jail since 06 months, yet commencement of his trial and its conclusion is not in sight, would also tilt the scales of the justice in the favour of bail to accused rather jail.

7. For the above stated reasons, while relying upon cited authorities, a case for grant of bail to the applicant/accused is made out. The applicant shall be released on bail subject to furnishing bail bonds in the sum of Rs.100,000/- (rupees one lac) and P.R bond in the like amount to the satisfaction of the trial Court.

JUDGE

Qazi Tahir/\*