

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Asif Saeed Khan Khosa  
Mr. Justice Ejaz Afzal Khan  
Mr. Justice Iqbal Hameedur Rahman

**Criminal Petition No. 433 of 2015**

(Against the order dated 06.04.2015 passed by the Lahore High Court, Lahore in Criminal Miscellaneous No. 01 of 2015 in Criminal Appeal No. 645 of 2015)

***Muhammad Adnan alias Dana***

*...Petitioner*

***versus***

***The State, etc.***

*...Respondents*

For the petitioner: Mr. Tariq Mehmood Butt, ASC  
with the petitioner in person.

For the respondents: N.R.

Date of hearing: 19.08.2015

**ORDER**

**Asif Saeed Khan Khosa, J.:** Muhammad Adnan alias Dana petitioner was convicted for an offence under section 9(b) of the Control of Narcotic Substances Act, 1997 *vide* judgment dated 23.07.2015 handed down by the learned Additional Sessions Judge, Faisalabad and was sentenced to rigorous imprisonment for seven months and a fine of Rs. 9,000/- or in default of payment thereof to undergo simple imprisonment for two months. It is of some importance to mention here that at the time of announcement of the judgment by the trial court the petitioner

had slipped away and resultantly perpetual non-bailable warrants of arrest had been issued by the trial court against him. The petitioner filed Criminal Appeal No. 645 of 2015 before the Lahore High Court, Lahore challenging his conviction and sentence and also filed Criminal Miscellaneous No. 01 of 2015 seeking suspension of his sentence during the pendency of his appeal. The said appeal was admitted to regular hearing by the High Court on 06.04.2015 but on the same date the miscellaneous application filed by the petitioner seeking suspension of his sentence was dismissed because of the conduct of the petitioner displayed before the trial court. Hence, the present petition before this Court.

2. Upon filing of this petition by the petitioner the office of this Court had raised an objection regarding its entertainability in view of the provisions of Order XXIII Rule 8 of the Supreme Court Rules, 1980 which objection of the office was assailed by the petitioner before a learned Judge-in-Chamber of this Court through Criminal Miscellaneous Appeal No. 20 of 2015. On 15.06.2015 a learned Judge-in-Chamber of this Court had directed the main petition to be fixed before a Bench of this Court which would consider the question of maintainability of this petition and would then decide the petition on its merits, if need be. This petition was fixed before a Bench of this Court on 29.06.2015 and on that occasion the hearing of the matter was adjourned with an observation that the question of maintainability of this petition would be adjudicated upon by the Court on the next date of hearing besides considering the merits of the case, if found necessary. The present petition has now been fixed for hearing today and we have heard the learned counsel for the petitioner at some length. The learned counsel for the petitioner has mainly contended that after recording of his conviction and sentence by the trial court the petitioner had surrendered before the High Court at the time of hearing of his miscellaneous application seeking suspension of sentence and, thus, the High Court ought to have decided the said miscellaneous application on its merits. In support of this submission the learned

counsel for the petitioner has placed reliance upon the case of Mazhar Ahmed v. The State and another (2012 SCMR 997).

3. After hearing the learned counsel for the petitioner and going through the relevant record of the case appended with this petition we have observed that the objection raised by the office to entertainability of the present petition is grounded in the provisions of Order XXIII Rule 8 of the Supreme Court Rules, 1980 which read as follows:

"8. Pending the disposal of a petition under this Order, the Court may direct that execution of any order for imprisonment or fine, against which leave to appeal is sought, be stayed, on such terms as the Court may deem fit:

Provided that unless surrender is first made to an order of imprisonment, as above, the petition shall not be entertained.

Provided further, petitions involving bail before arrest may be entertained and posted for hearing if the petitioner undertakes to appear and surrender in Court."

A bare reading of the above mentioned first proviso to Rule 8 of Order XXIII of the Supreme Court Rules, 1980 makes it abundantly clear that a criminal petition is entertainable by the office of this Court only after a surrender is made by the petitioner to an order of imprisonment outstanding against him and after entertaining of such a petition after such surrender to the order of imprisonment this Court may stay execution of the order of imprisonment or fine. Surrender to an order of imprisonment is, thus, a condition precedent for entertainment of such a petition and it is only after a valid and proper entertainment of such petition that the relief regarding stay of execution of the order for imprisonment or fine can be granted. It is also quite clear that the requirement of surrender to an order of imprisonment pertains only to criminal petitions involving an order of imprisonment (e.g., cases where a conviction has been recorded or upheld and an express order has been passed that the petitioner may be taken into custody or cases where bail of the petitioner has been disallowed or cancelled and an order has been passed that he may be taken into custody) and not to criminal petitions seeking bail

before arrest in a criminal case where no order of imprisonment has so far been passed. In the case in hand on 27.03.2015 the trial court had convicted and sentenced the petitioner for an offence under section 9(b) of the Control of Narcotic Substances Act, 1997 and had simultaneously passed an order that the petitioner, who was on bail till then, was to be arrested and lodged in a jail to serve his sentence of imprisonment and upon slipping away of the petitioner from the trial court on that occasion the said court had also issued perpetual non-bailable warrants for the petitioner's arrest. It is, thus, obvious that not one but two orders of imprisonment already stand outstanding against the petitioner and admittedly he has not surrendered to the said orders of imprisonment so far. It goes without saying that surrender to an order of imprisonment is not the same thing as surrendering before a higher court without actually being imprisoned in compliance of a judicial order passed in that regard. In this view of the matter we have entertained no manner of doubt that the present petition filed by the petitioner is not entertainable till he surrenders to the above mentioned orders of imprisonment, as made explicit by the first proviso to Rule 8 of Order XXIII of the Supreme Court Rules, 1980. Reliance placed by the learned counsel for the petitioner upon the case of Mazhar Ahmed v. The State and another (*supra*) has been found by us to be inapt because in that case no discussion was made about the provisions of the first proviso to Rule 8 of Order XXIII of the Supreme Court Rules, 1980 and at the far end of the judgment passed by this Court in that case a reference was made to the second proviso to Rule 8 of Order XXIII of the Supreme Court Rules, 1980 in the context of a precedent case cited before the Court. The judgment passed by this Court in that case is not relevant to the point in issue in the present petition because what is relevant to the present petition is the first proviso to Rule 8 of Order XXIII of the Supreme Court Rules, 1980 and not the second proviso to the said Rule. We have also observed that in the case of Musharaf Khan v. The State (1985 SCMR 900) leave to appeal had been granted by this Court to consider as to whether a person could approach this Court for his bail before arrest in a criminal

case by surrendering before this Court or not but that issue again is not relevant to the present petition as the present petition pertains to suspension of sentence or stay of execution of an order for imprisonment and not to bail before arrest which matter is regulated by the second proviso to Rule 8 of Order XXIII of the Supreme Court Rules, 1980 and not the first proviso to that Rule.

4. For what has been discussed above we have found that the present petition is not entertainable because the mandatory requirement of surrender to an order of imprisonment contemplated by the first proviso to Rule 8 of Order XXIII of the Supreme Court Rules, 1980 has not been fulfilled by the petitioner. In this view of the matter the objection raised by the office regarding entertainability of this petition is sustained and this petition is dismissed on that score.

Judge

Judge

Judge

Islamabad  
19.08.2015  
Not approved for reporting.  
Arif