

In the Supreme Court of Pakistan
(Appellate Jurisdiction)

Present:

Mr. Justice Anwar Zaheer Jamali
Mr. Justice Dost Muhammad Khan
Mr. Justice Umar Ata Bandial

Crl.P.L.A. No.15 of 2015

(On appeal from judgment of Peshawar High Court,
Peshawar dated 8.12.2014 passed in Crl. Misc. (BA) of 2014)

Socha Gul

Petitioner

Versus

The State

Respondents

For the petitioner:

Mr. Arshad Hussain Yousafzai, ASC
Syed Rifaqat Hussain Shah, AOR.

For the State/ANF:

Nemo.

On Court Notice:

Mr. Sajid Ilyas Bhatti, DAG.

Date of hearing:

27.3.2015

Judgment

Anwar Zaheer Jamali, J – Petitioner, Socha Gul, who is one of the nominated accused in crime No.91 dated 30.9.2014, Police Station ANF, District Peshawar, for commission of offence under section 9(c) of the Control of Narcotic Substances Act, 1997 ("CNS Act of 1997"), with the allegation that, upon spy information, when he was apprehended by the personnel of Anti-Narcotic Force, upon his personal search, four kilograms *charas* was recovered from his possession; was refused bail by the learned Judge, Special Court (CNS), Khyber Pakhtunkhwa, Peshawar, vide order dated 15.10.2014. Thereafter he moved Criminal Miscellaneous (BA) No.1716-P of 2014 before the Peshawar High Court, Peshawar, with the prayer for grant of bail in the said crime, but it was also declined, vide impugned order dated 8.12.2014.

2. We have heard the learned ASC for the petitioner. He contends that petitioner, who has his employment abroad, had returned to Pakistan only three weeks before the date of alleged occurrence and has been falsely implicated in the commission of crime by the ANF Police. In such circumstances, following the ratio of judgment in the case of Jamal-ud-Din alias Zubair Khan versus the State (2012 SCMR 573), qua the quantity of narcotic substance allegedly recovered from him, having remained in custody for over five months, he is entitled for grant of bail.

3. We have perused the case record and seen that the offence, for which the petitioner has been charged, falls under section 9(c) of CNS Act of 1997, as the quantity of narcotic substance (*charas*) recovered from his possession is four kilograms. The samples of *charas* contained in four packets were separately taken, sealed on the spot, and report of Forensic Science Laboratory has been received in the positive. In such circumstances, at this stage no case for grant of bail is made out, merely for the reason that in the case of Jamal-ud-Din (*supra*) the honourable two member Bench of this Court has admitted the accused to bail with the observation that, while hearing a petition for grant of bail, the Court is not to keep in view the maximum sentence provided by the statute for the charged offence, but the one which is likely to be entailed.

4. In the present case, the accused is charged with the commission of offence under section 9(c) of CNS Act of 1997, which reads as under:-

“9. Punishment for contravention of Sections 6, 7 and 8.--- Whoever contravenes the provisions of Section 6, 7 or 8 shall be punishable with:-

- a. imprisonment which may extend to two years, or with fine, or with both, if the quantity of the narcotic drug, psychotropic substance or controlled substance is ten grams or less;
- b. imprisonment which may extend to seven years and shall also be liable to fine, if the quantity of the narcotic drug, psychotropic substance or controlled substance exceeds one hundred grams but does not exceed one kilogram;
- c. death, or imprisonment for life, or imprisonment for a term which may extend to fourteen years and shall also be liable to fine which may be upto one million rupees, if the quantity of narcotics drug, psychotropic substance or controlled substance exceeds the limits specified in clause (c):

Provided that, if the quantity exceeds ten kilograms the punishment shall not be less than imprisonment for life.

5. From the above reproduction, intent and scheme of the legislator is quite clear about the quantum of prescribed punishment under section 9(c) (*ibid*), which could be either death or imprisonment for life or an imprisonment for a term which may extend to fourteen years, in addition to fine upto one million rupees. In our opinion, in such circumstances, neither categorization of sentencing nor any guess work or speculative exercise could be undertaken by the Court at bail stage to enlarge an accused on bail in such crimes, which will amount to pre-empting the mind of the trial Court, controlling its powers in the matter of sentencing an accused and determining the quantum of sentence upon his conviction.

6. In the case of Ghulam Murtaza versus the State (PLD 2009 Lahore 362), which is an order in a reference arising out of an appeal under the CNS Act 1997, and is frequently referred in the context of sentencing the accused convicted under CNS Act of 1997,

inter alia, keeping this aspect in mind, the larger Bench of the Lahore High Court, while categorizing the sentences of an accused on the criteria of nature of narcotic substance recovered and its quantity, has aptly observed as under:-

“10. It goes without saying that in a particular case carrying some special features relevant to the matter of sentence a Court may depart from the norms and standards prescribed above but in all such cases the Court concerned shall be obliged to record its reasons for such departure.”

7. Again, in the case of Nadeem Ashraf versus State (2013 SCMR 1538), making reference to the judgment in the case of Ameer Zeb versus State (PLD 2012 S.C. 380), in a narcotics case, while refusing bail, the issue of quantity of recovered narcotics substance qua method/mode of its sampling and its relevancy at bail stage has been dilated by the Court in the following words:-

“4. Admittedly the trial has yet to commence and it would be rather presumptuous on the part of the petitioner to infer that the prosecution would lead evidence only to the extent of the weight to which reference has been made by the petitioner’s learned counsel. It is always open for the parties and in this case for the prosecution to lead further evidence and to request the court that it be allowed to send the entire narcotics allegedly recovered from the petitioner for chemical analysis.”.

8. It is pertinent to mention here that offences punishable under CNS Act of 1997 are by its nature heinous and considered to be the offences against the society at large and it is for this reason that the statute itself has provided a note of caution under section 51 of CNS Act of 1997 before enlarging an accused on bail in the ordinary course. When we refer to the standards set out under section 497 Cr.P.C. for grant of bail to an accused involved in an offence under

section 9(c) of CNS Act of 1997, even on that basis we find that an accused charged with an offence, prescribing various punishments, as reproduced above, is not entitled for grant of bail merely on account of the nature or quantity of narcotic substance, being four kilograms. Firstly, as deeper appreciation of evidence is not permissible at bail stage and secondly, in such situation, looking to the peculiar features and nature of the offence, the trial Court may depart from the normal standards prescribed in the case of Ghulam Murtaza (*supra*) and award him any other legal punishment. Thus, in our opinion, ratio of judgment in the case of Ghulam Murtaza (*supra*) is not relevant at bail stage.

9. For the foregoing reasons, leave is refused and this petition is dismissed.

Judge

Judge

Judge

Islamabad,
27th March, 2015
Approved for reporting.
Riaz