

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Justice Qazi Faez Isa, CJ
Justice Amin-ud-Din Khan
Justice Athar Minallah

Criminal Petition No. 1192 of 2023

(Against the order dated 20.09.2023 of the Islamabad High Court, Islamabad passed in Criminal Misc. No. 1285-B/2023)

Zahid Sarfaraz Gill. ... *Petitioner*

Versus

The State. ... *Respondent*

For the Petitioner: Mr. M. Shoaib Shaheen, ASC.

For the State: Ch. Rifaqat Ali,
State Counsel, Islamabad.
a/w Daud Sabir, SI.

Date of Hearing: 22.11.2023.

ORDER

Qazi Faez Isa, CJ. The learned counsel for the petitioner states that the petitioner was falsely implicated in case arising out of FIR No. 173 registered at Police Station Secretariat, Islamabad on 29 May 2023 which was registered as a counterblast to the written complaint submitted by the petitioner against some police officials on 17 May 2023. He further states that the record establishes that the petitioner was not at the stated place of incident and this aspect of the case has not been examined by the Investigating Officer.

2. Notice was issued to the respondent-State on 30 October 2023 and the learned State counsel is in attendance. He states that the chemical report confirms that the seized substance was narcotic - *charas* - and the total quantity is 1833 grams, which as per the Table in section 9(1) of the Control of Narcotic Substances Act, 1997 (**'the Act'**) comes under clause (c) of its third category and prescribes a minimum imprisonment of nine years and a maximum of fourteen years, and fine. The learned State counsel further states that the petitioner was caught red handed by the police in a

public place at 6 pm in the month of May and the case against him is fully established.

3. The learned counsel for the petitioner in rebuttal states that the petitioner has attributed *mala fide* to the police and it is surprising that in the month of May at 6 pm during daylight hours at a popular public park, the only witnesses were policemen, none of whom made a video recording, nor took any photographs of the seizure and arrest.

4. The facts and circumstances of the instant case makes it a case of further inquiry. Accordingly, the petitioner is granted bail, in case arising out of FIR No. 173, dated 29 May 2023, registered at Police Station, Secretariat, Islamabad, subject to furnishing bail bond in the sum of one hundred thousand rupees with one surety in the like amount to the satisfaction of the Trial Court. This petition is converted into an appeal and allowed by setting aside the impugned order. We think it appropriate to make certain observations which were necessitated by the facts of this and other narcotic substance cases.

5. We are aware that section 25 of the Act excludes the applicability of section 103 of the Code of Criminal Procedure, 1898 which requires *two or more respectable inhabitants of the locality* to be associated when search is made. However, we fail to understand why the police and members of the Anti-Narcotics Force ('ANF') do not record or photograph when search, seizure and/or arrest is made. Article 164 of the Qanun-e-Shahadat, 1984 specifically permits the use of *any evidence that may have become available because of modern devices or techniques*, and its Article 165 overrides all other laws.

6. In narcotic cases the prosecution witnesses usually are ANF personnel or policemen who surely would have a cell phone with an in-built camera. In respect of those arrested with narcotic substances generally there are only a few witnesses, and most, if not all, are government servants. However, trials are unnecessarily delayed, and resultantly the accused seek bail first in the trial court which if not granted to them is then filed in the High Court and there too if it is declined, petitions seeking bail are then filed in this Court. If the police and ANF were to use their mobile phone cameras to record and/or take photographs of the search, seizure

and arrest, it would be useful evidence to establish the presence of the accused at the crime scene, the possession by the accused of the narcotic substances, the search and its seizure. It may also prevent false allegations being levelled against ANF/police that the narcotic substance was foisted upon them for some ulterior motives.

7. Those selling narcotic substances make their buyers addicts, destroy their state of mind, health and productivity, and adversely affect the lives of their family members. The very fabric of society is damaged. ANF and the Police forces are paid out of the public exchequer. It is incumbent upon them to stem this societal ill. The Prosecution services, paid out of the public exchequer, is also not advising the ANF/police to be do this simple act of making a recording and/or taking photographs as stated above.

8. A consequence of poor investigation, not supported by evidence adversely affects the cases of the prosecution. The courts, which too are sustained by the public exchequer, are burdened with having to attend bail applications because the commencement and conclusion of the trial is delayed. It is time that all institutions act professionally and use all available lawful means to obtain evidence. A credible prosecution and adjudication process also improves public perception. We expect that all concerned will attend to these matters with the attention that they demand, because the menace of narcotic substances in society has far reaching consequences: by destroying entire households, creating societal problems and casting a heavy financial burden on the State when drug addicts are required to be treated. Moreover, research indicates that drugs addicts resort to all methods to obtain drugs, including committing crimes.

9. Copy of this order be sent to the Secretary Ministry of Narcotics Control, Government of Pakistan, Director-General, Anti-Narcotics Force, the Secretaries of the Home Departments of all the provinces, Inspector-Generals of Police of all the provinces and of the Islamabad Capital Territory. They may also consider whether they want to amend the ANF/Police rules to ensure making video recordings/taking photographs whenever possible with regard to capturing, preserving and using such evidence at trial.

Chief Justice

Judge

Judge

Islamabad:
22.11.2023
(M. Tauseef /Hassan K.W.)

Approved for Reporting