

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Bench:

Mr. Justice Jamal Khan Mandokhail
Mr. Justice Syed Hasan Azhar Rizvi
Ms. Justice Musarrat Hilali

Criminal Petition No.1241-L of 2023

*(Against the order dated 20.10.2023 of the Lahore High Court
Lahore passed in Cr.Misc. No.62731-B of 2023)*

Sagheer Ahmed

...Petitioner(s)

Versus

The State and another

...Respondent(s)

For the petitioner:

Mr. Akhtar Nawaz Raja, ASC
(via video link Lahore)

For the State:

Mr. Irfan Zia, D.P.G.
Muhammad Mushtaq, S.I.

Date of hearing:

13.03.2024

ORDER

Syed Hasan Azhar Rizvi, J.- The petitioner has invoked the jurisdiction of this Court under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, calling in question the order of the Lahore High Court, Lahore, dated 20.10.2023 whereby his application for bail after arrest in FIR No. 6996/23 dated 06.08.2023 for the offense under Section 9(1)(3)(c) of the Control of Narcotic Substances Act, 1997 (*“Act of 1997”*) registered at Police Station, Kahna, Lahore, was dismissed.

2. The brief facts of the case are that on 06.08.2023 at about 01:55 a.m. the petitioner was intercepted by the Complainant and other police contingents at Kachawa Graveyard and was found carrying *charas* weighing 1420 grams; hence this case.

3. At the very outset, it has been argued by the learned counsel for the petitioner that the petitioner has been falsely roped in the present case against the facts and circumstances. He contends that there is a delay of more than one month in sending the case property to the Forensic Science Laboratory for analysis, which raises serious questions regarding the safe custody as well as the transportation of the case property and creates doubts in the story of the prosecution. Lastly contends that the learned High Court has not properly evaluated the material available on the record, therefore, by declining bail to the petitioner grave miscarriage of justice has been done.

4. On the other hand, the learned Law Officer argued that the petitioner is specifically nominated in the FIR and from his possession a considerable quantity of narcotics has been recovered, therefore, he does not deserve any leniency from this Court.

5. We have heard learned counsel for the parties at some length and have perused the material available on the record.

6. The record shows that FIR was registered on 06.08.2023 and the accused was arrested on the same day. While, as per the report of the Punjab Forensic Science Agency dated 27.10.2023, the sample of the *charras* was received by Forensic Science Laboratory on 08.09.2023, after a delay of more than a month. The provisions relating to the sending of samples to the forensic Science Laboratory are provided in Rule 4(2) of Control of Narcotic Substances (Government Analysts) Rules, 2001, which provides that the samples may be dispatched for analysis under cover of Test Memorandum specified in Form-I at the earliest, but not later than seventy-two hours of the seizure. There is nothing on

record to show to whom the alleged recovered narcotics were handed over at the police station for safe custody during that period. The fact of the safe custody of the recovered narcotic substance is to be established or proved by the prosecution during the trial; however, the above-noted unreasonable delay of more than one month could be considered at the time of deciding the bail, which makes the case of the petitioner one of further inquiry.

7. The accused is behind the bars since his arrest and the trial has not concluded so far, even after a considerable period has elapsed. Moreover, the maximum sentence for the alleged offence is fourteen years, and as such, it does not attract the bar of Section 51 of Act of 1997. The liberty of a person is a precious right guaranteed under the Constitution of the Islamic Republic of Pakistan, 1973. The denial of this right should only occur when guilt is established without a second thought.

8. Keeping in view the facts and circumstances narrated above and the quantity of recovered narcotic substance and seeking guidance from the cases titled Saeed Ahmed v. State through P.G. Punjab and another (PLJ 2018 SC 812) and Abbas Raza v. The State (2020 SCMR 1859), this petition is converted into an appeal and the same is allowed. The petitioner is allowed bail after arrest subject to his furnishing bail bonds in the sum of Rs.100,000/- (*Rupees one hundred thousand only*), with one surety in the like amount, to the satisfaction of the learned trial Court. He shall be released forthwith, if not required to be detained in any other case.

Before parting, it is clarified that the observations made hereinabove are tentative in nature and the Trial Court shall be free

to decide the case, on merits, without being influenced in any manner from the same, strictly in accordance with law. Above are the reasons of our short order of even date.

Judge

Judge

Judge

Islamabad, the
13th April, 2024
Approved for reporting
*Ghulam Raza/**