

## JUDGMENT SHEET

**IN THE PESHAWAR HIGH COURT,  
MINGORA BENCH (DAR-UL-QAZA), SWAT  
(Judicial Department)**

**Cr.M B.A. No. 465-M/2017.**

### **JUDGMENT**

Date of hearing: **26.10.2017**

**Petitioner:- (Mst. Samina) by Muhammad Anwar, Advocate.**

**Respondents:- (the State & 1 another) by Mr. Rafiq Ahmad, Asstt: Advocate General**

**MOHAMMAD IBRAHIM KHAN, J.-** On her implication, the accused/Petitioner Mst. Samina in case FIR No. 1201 dated 26.09.2017 charged under section 9 (C) CNSA registered at Police Station Ghalegay District Swat is optimistic for the grant of her post arrest bail.

2. Prior to, the prayer of the Petitioner for the similar relief before the Court of learned Additional Sessions Judge-VI/Izafi Zila Qazi Swat through an application No. 529/4 of the year 2017 was dismissed in slipshod manner for reasons that "it is found that accused/Petitioner has got direct nexus with commission of a non-bailable offence falling within the restrictive

clause of statutory provision of procedural law.  
The prosecution has collected sufficient  
material connecting the accused/Petitioner with  
the commission of a non-bailable offence.  
Hence, the application was stood dismissed."

3. The contents of the 'Murasila' followed by lodging of the First Information Report would reveal that Kaleem Jan ASI alongwith other police party were present at Landaki Check Post and had fenced the road, when a Flying Coach emerged from Malakand side, was halted on account of suspicion. The present accused/Petitioner was seated in the front seat of the Flying Coach, after cursory interrogation by the Lady Constable when belonging in shape of AIWA TV of the lady accused was searched out, it contained 6 packets of Chars wrapped up with yellow solution tape. After weighment of all the packets, total of which came out to 7200 grams. Out of each packet 5/5 grams were separated for chemical analysis while the rest 7170 grams were sealed into separate parcels.

4. Having heard arguments of learned counsel for the Petitioner and learned Asstt: Advocate General for the State, record with their assistance gone through.

5. No doubt huge quantity of Chars weighing 7200 grams have been allegedly recovered from the T.V if owned by the present accused/Petitioner contained in 6 packets wrapped up with yellow solution tape and the offence being non-bailable in view of the section 9 (C) CNSA read with section 51 of the *ibid* Act, but whether accused/Petitioner has conscious knowledge of the contraband Chars in question or otherwise, this aspect of the case would be thrashed-out by the learned Trial Court after recording of the evidence. Moreover, the lady accused was seated in front alongside of the driver whereas the AIWA TV was found beneath the rear seat occupied by the other passenger. It is astonishing that the police officials could smell the contraband packed in TV set but none of the passenger was even with unstuffy and airy nose who could not smell all



the way and even objected to that Chars was transporting by any of the travelling passengers other than the accused/Petitioner with suckling baby.

6. Above all, the accused/Petitioner has 2/3 years old suckling baby by the name of Mst. Duaa in her custody, as per information conveyed by the concerned Muharir warrant of District Jail Timergara. In this respect, reliance has been placed on the case law cited as 2011 YLR 2975 (Peshawar) " Mst. Kabelah vs the State", wherein the relevant citation enunciates:-

*"Accused though was directly involved in the narcotics case, but a suckling baby was along with the accused who had been behind the bars for the last two months. Welfare of minor at such a stage would be taken into account. This judgment further avers that Holy Prophet peace be upon him in case of "Ghamidiyyah" had suspended the sentence of pregnant woman, not only till delivery of the child, but also postponed the same till suckling period i.e. two years for*

*welfare of the child which showed paramount and significance of the right of a suckling child in Islam. Held, woman having suckling child, should not be detained and granted bail, in such circumstances. Order accordingly."*

7. In view of the above and while deriving wisdom from the above-referred judgment, there is no need to further keep the Petitioner in jail for an indefinite period, therefore, Petitioner is released on bail subject to furnishing bail bonds in the sum of Rs. 200,000/- (Rupees two lacs) with two sureties each in the like amount to the satisfaction of learned Trial Court, who shall ensure that the sureties are local, reliable and men of means.

8. These are the reasons of my short order of even date.

Announced  
Dt: 26.10.2017.

  
JUDGE

Office  
07/11/2017  
w/R