

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

Cr.M B.A. No. 188-M/2017.

JUDGMENT

Date of hearing: **12.5.2017.**

Petitioner:- (Bacha Khan) by Mr. Abdul Jalal, Advocate.

Respondents:- (the State & 1 another) by Barrister Asad Hameed-ur-Rahman State counsel.

MOHAMMAD IBRAHIM KHAN, J.- The

'Murasila' followed by the lodging of the First Information Report pertains to case FIR No. 377 dated 11.04.2017 registered under sections 9 (C) CNSA & 15 A.A. at Police Station Matta District Swat. The report says about that the police officials had received an information that notorious smuggler is present in his house and is busy in sale of narcotics. Upon such information, raid was conducted and an accused by the name of Bacha Khan was apprehended. Upon his personal search from right side pocket white plastic bag containing "ICE" weighing 10 grams were recovered alongwith 30 bore pistol

bearing No. H-76274, 3 chargers and 17 live rounds. Later, on further search from dowering room of the said accused a box was recovered which contained two (2) packets of 'Chars', each packet on weightment come to 1000 grams. For chemical analysis 5 grams 'Chars' and 1 gram 'ICE' were separated and sent to the Laboratory, while rest of the recovered contraband Chars and 'ICE' were sealed into separate parcels.

2. On implication of the said accused Bacha Khan in order to seek his liberty an application bearing No. 134/4 of the year 2017 for the grant of similar relief was earlier preferred before the Court of learned Additional Sessions Judge/Izafi Zila Qazi /Judge Special Court Matta Swat, which was dismissed for the all reasons recorded therein on 20.04.2017.

3. Having heard arguments of learned counsel for the Petitioner and learned State counsel, record with their assistance gone through.

4. Learned counsel for the Petitioner referred to *PLJ 2004 Cr.C. (Peshawar) 79 "Zar Gul vs the State", PLJ 2004 Cr.C (Lahore) 83 (DB) "Khalid alias Libro vs the State", 2008 YLR 2014 (Peshawar) "Hakeem Shah the State", 1998 P Cr. LJ 370 (Lahore) "Muhammad Usman vs the State", 2000 P Cr. LJ 657 (Karachi) "Gul Hassan Dero vs the State" and 2000 P Cr. LJ 674 (Karachi) "Ranjho vs the State"* and in the light of these dictums of the Hon'ble superior Courts prayed for the grant of bail in favour of the Petitioner. Inversely learned State counsel vehemently opposed the submissions put-forward by learned counsel for the Petitioner and prayed for utter dismissal of the bail petition in view of the fact of previous involvement of the accused/Petitioner in recovery of contraband effected from his personal possession. He has been previously convicted by the Courts of competent jurisdiction under alike offences. He further added that as the recovery of amphetamine (ICE) and two separate reports

pertaining to the recovery of Chars have been found in positive, therefore the Petitioner is not at all entitled to the concession of bail.

5. Whereas recovery of amphetamine (ICE) is concerned, it may be very dangerous drug, but its quantity is only 10 grams. Moreover, in view of the recovery of Chars two packets weighing 1000 grams each, it is a border line case between sub-clauses (b) and (c) of section 9 CNSA and punishment is always to be awarded for the offence in commensuration with the quantum of recovery of contraband, therefore, the quantum of punishment has to be ascertained by the Trial Court. In such like cases whether the accused would be liable to the maximum punishment provided for the offence and also as to whether the punishment in case of proof of the guilt after trial in the circumstances would fall under the prohibitory clause are the questions requiring further probe, as punishment provided under section 9(c) CNSA 1997 varies according to the circumstances of

the case commensurating with the quantum of recovery.

6. In such state of affairs, being a case of further inquiry the Petitioner is entitled to the concession of bail. Hence he is asked to furnish 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.

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

Announced
Dt: 12.05.2017.

JUDGE