

**JUDGMENT SHEET****PESHAWAR HIGH COURT  
Mingora Bench (Dar-ul-Qaza) Swat  
(Judicial Department)****Cr.M.B.A. No. 621-M/2020****ORDER**

Date of hearing: 20.11.2020

**Petitioner:- (Bilal Ahmad) by M/S Noor Alam  
Khan and Fawad Afzal, Advocates.****Respondent:- (The State) by Mr. Sohail Sultan,  
Astt:A.G.**

**WIOAR AHMAD, J:-** This order is directed to dispose of application filed by petitioner namely Bilal Ahmad for grant of post arrest bail in case FIR No. 84 dated 12.09.2020 registered under section 9 (D) of the Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019 at Police Post Hussan Khan Shaheed Ala Dand District Malakand.

2. As per contents of FIR, complainant namely Naik Rehman Post Commander along with other levy officials had laid a picket ("Nakabandi"). They stopped a motorcar bearing No. 6432/POLICE, which was being driven by present accused/petitioner namely Bilal Ahmad at the relevant time, while another person sitting in its front seat had been identified as Shakeel Ahmad. During search of motorcar, the levy officials recovered five (05) packets of Chars total weighing 6,000 grams lying in a white colour plastic bag beneath the front seat of

motorcar. Accused were arrested at the spot and the motorcar was also taken in possession. 'Murasila' was drafted which culminated into *ibid* FIR registered against accused/petitioner and other co-accused at police station concerned.

3. I have heard arguments of learned counsel for petitioner, learned Astt: A.G for State and perused the record.

4. Perusal of record reveals that about six (06) KGs of contraband Chars was found lying hidden in the motorcar, which was being driven by the accused/petitioner at the time of commission of the offence. FSL report has been received which further confirmed that the recovered contraband had been Chars. Accused/petitioner was found connected with commission of the offence on tentative appraisal of the record.

5. Learned counsel for petitioner had laid great stress on the issue that words "or" has been used in clause (a), (b) and (c) of section 9 of the Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019, which suggested that the sentences of imprisonment had been interchangeable and it had been a settled principle that lessor punishment provided for an offences should be taken for the purpose of bail,

therefore the offence could not be deemed to have been falling in prohibitory clause of section 497 Cr.P.C. This Court would not be able to agree with such assertion of learned counsel for petitioner, as the word "or" occurring in clause (a), (b) and (c) cannot be interpreted the way learned counsel for petitioner argued at bar. No doubt, words "or" has been used in clause (a), (b) and (c), but wordings of clause (d) of section 9 is very much clear which provided as;

***(d) death, imprisonment for life or imprisonment for a term which may extend to fourteen years and with fine which may extend up to rupees one million and not less than five lacs, if the quantity of narcotic substance exceeds the limits of one kilogram.***

***Provided that if the quantity exceeds ten kilograms, the punishment shall not be less than imprisonment for life in any case."***

It is quite clear that in cases where the quantity of recovered narcotic substance exceeds the limit of one kilogram, the term of imprisonment provided therein has been fourteen years along with fine which may extend to one million and not less than five lacs. The offence is therefore falling within prohibitory clause of section 497 Cr.P.C and accused/petitioner was not found entitled to the concession of bail on tentative appraisal of the evidence.

6. In light of what has been discussed above, the application in hand was found to be lacking any substance and same is accordingly dismissed.

Announced  
Dt: 20.11.2020

JUDGE

OTM  
24/11  
WIR