

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT
PESHAWAR
(Judicial Department)



Cr.M B.A. No. 2774-P/2017.

JUDGMENT

Date of hearing: **04.01.2018**

Petitioner:- (Mst. Gul Meena) by Mr. Sartaj Khan, Advocate.

Respondent:- (The State/ANF) by Mr. Tariq Kakar, Special Prosecutor.

MOHAMMAD IBRAHIM KHAN, J.- On her implication, the accused/Petitioner Mst. Gul Meena in case FIR No. 90 dated 12.11.2017 charged under section 9 (C) CNSA registered at Police Station ANF Peshawar 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 Judge Special Court (CNS) Khyber Pakhtunkhwa Peshawar was dismissed in slipshod manner for reasons that "huge quantity of contraband Chars has been recovered from the direct personal possession of the accused/Petitioner. The data

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available on file prima facie connects the accused/Petitioner with the commission of offence falling within the prohibitory clause of section 497 Cr.P.C"

3. The contents of the 'Murasila' followed by lodging of the First Information Report would reveal that the complainant Mehmood-ul-Hassan Station House Officer of Police Station ANF Peshawar was busy at the place of occurrence along with other ANF officials in respect of checking of vehicles. In the meanwhile passenger Hiace Van bearing No. LES-9054 was given signal to halt. When a lady sitting behind the driver seat having 4 years baby in her lap was de-boarded from the vehicle on account of suspicion, she disclosed her name as Gul Meena wife of Haneef Gul resident of Akha Khail Kalanga Tehsil Bara Khyber Agency and her child was identified by the name of Yahya Khan. During personal search of the accused/lady through lady constable 6 packets of Chars were recovered which were fastened with her body through yellow solution tape. On weighment

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each packet contained 1100 grams Chars total of which came out to 6600 grams. From each packet 10/10 grams were separated for chemical analysis while rest of the recovered stuff was sealed into separate parcels.

4. Having heard arguments of learned counsel for the petitioner, he relied on 2017 MLD 1367 (Peshawar) "Mst. Javeria v/s The State", 2013 P Cr. LJ 1277 (Peshawar) "Mst. Saima v/s The State", 2013 YLR 973 (Peshawar) " Mst. Perveen Bibi v/s The State" and 1966 SCMR 973 "Mst. Nusrat v/s The State" and thereby prayed for concession of bail in favour of the accused/petitioner as being female accused she has minor son with her in Jail. Inversely, the learned Special Prosecutor on behalf of ANF opposed the concession of bail as huge quantity of narcotics weighing 6600 grams were recovered from personal possession of the accused/petitioner.

5. It is yet to display under evidence that the exact weighment being carried out through the

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mode to have been adopted either by digital or local scale. It is also a matter to be considered that if this huge quantity of 6600 grams was wrapped by the accused/petitioner around her body which was transported through vehicle Hiace van whether it was not giving smell to have been noticed by the other passengers and the driver or cleaner of the said vehicle. There is no information either given to the ANF officials as the murasila does not disclose this fact that the accused lady was only found in suspicion condition, therefore, the contraband charas to have been wrapped by lady around her body would also be difficult to find out when such lady has no previous history of her involvement and she was unknown to the ANF officials.

6. According to the ANF officials huge quantity of Charas weighing 6600 grams is said to have allegedly recovered from direct possession of accused/petitioner contained in 06 packets wrapped up with her body through yellow solution tape and the offence being non-bailable in view of the Section 9-C CNSA read

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with Section 51 of the ibid Act, but the accused/petitioner has minor son with her, confined in the unpleasant environment of the prison. No doubt, the wheel of fortune of the accused/petitioner will be thrashed out by the learned trial Court during the course of recording of evidence with special reference to the direct recovery of huge quantity of Charas weighing 6600 grams, yet welfare of the minor could not be easily brushed aside especially in view of the scarcity of basic facility in prisons imparting education and overall impact on character build up of minors.

7. There is no hope that the seizing officer, who is the incharge of the ANF Police Station, Peshawar will ever submit the challan before the Court of CNS in the near future as by the time this occurrence has taken place on 12.11.2017, yet the challan has not been prepared because the petitioner being a woman, her younger son is languishing in the Jail and the prosecution is yet to bring home charge against her, therefore, she is entitled to the concession of bail. She 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 Illaqa Judicial Magistrate/Duty Magistrate, who shall ensure that the sureties are local, reliable and men of means.

8. Before parting with this judgment, it is utmost necessary to clarify here that this Court in any manner is not inclined to extend any undue favour to the accused/petitioner rather the observations rendered above are purely restricted to the welfare of the minor son and should not be treated as element of sympathy by the trial Court at the time of decision in respect of guilt of the accused/lady.

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

Announced
Dt: 04.01.2018


JUDGE

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Peshawar High Court, Peshawar
Authorised Under Article 87 of
the Constitution of Pakistan Order 1984

15 FEB 2018

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