

JUDGMENT SHEETPESHAWAR HIGH COURT, PESHAWARJUDICIAL DEPARTMENTCr.M/Bail No: 1659-P of 2018JUDGMENT

Date of hearing.....28.08.2018.....

Petitioner (s) (Muhammad Khan) By Mr. Muhammad Jehangir
Advocate.

Respondent (s) (State/ANF) By. Muhammad Tariq Kakar, Special
Prosecutor, ANF.

SHAKEEL AHMAD:-J: Through the instant petition, the accused-petitioner Muhammad Khan son of Azeem Khan, seeks post arrest bail in crime No.64 dated 22.04.2018 registered under section-9 (c) of the Control of Narcotic Substances Act, 1997, (“CNSA”), at Police Station ANF, Peshawar.

2. It is the case of the prosecution that on 22.4.2018, Incharge of Police Station ANF received a spy information that huge quantity of narcotics would be smuggled from Nowshera to Punjab through vehicle bearing registration No.LIC-579, on this the complainant (S.I Sajjad Dar) alongwith constables Naeem Abas, Muhammad Hayat

and other officials started surveillances on the spot at the instruction of incharge of Police Station ANF. In the meanwhile at 19.15 hours, the vehicle in question arrived on the spot, which was signaled to stop; that the driver of the vehicle was overpowered with the help of police officials, who disclosed his name as Muhammad Khan and the front seater disclosed his name as Shahzeb. The petitioner and co-accused admitted concealment of contraband in the vehicle. The vehicle was brought to police station, where it was searched, which led to the recovery of two KGs heroin and two KGs charas from its secret cavities, resultantly, the petitioner and co-accused were arrested. Vide order dated 10.7.2018, the learned Judge Special Court, (CNS) declined bail to the petitioner, hence this petition.

3. It has been argued by the learned counsel for the petitioner that he is innocent and has falsely been implicated. He next argued that the alleged contraband was recovered from the secret cavities of the vehicle and petitioner being its driver had no conscious knowledge of the same. He lastly argued that it is not the maximum

punishment, but ultimate sentence which is likely to be imposed be taken into consideration for the purpose of bail because question of sentence must commensurate with the quantum of guilt.

4. Conversely, the learned Special Prosecutor appearing on behalf of ANF vehemently opposed the contention of the learned counsel for the petitioner and contended that heroin weighing two KGs and charas weighing two KGs were recovered from inside door of the vehicle which was being driven by the accused, therefore, he can be saddled with criminal liability. He next contended that FSL report regarding charas and heroin were sufficient to show that substance recovered from the vehicle was charas and heroin, which could be used to cause intoxication. He lastly contended that categorization of sentence or guess work or speculative exercise cannot be taken by the Court at bail stage and prayed for dismissal of the bail petition.

5. I have heard arguments of the learned counsel for the parties and have gone through the record with their eminent assistance.

6. Scanning of the record reflects that heroin weighing two KGs and charas weighing two KGs were recovered from inside right door of the vehicle, which was being driven by the petitioner. It is now settled that driver cannot be absolved from the liability, if contraband are being transported in the doors of the vehicle being driven by him. In this behalf reference may be made to the cases reported as **Muhammad Shah..vs..State** (PLD 1984 SC 278), **Said Shah..vs..The State** (PLD 1987 SC 288), **Nadir Khan..vs..The State** (1988 SCMR 1899), **Rab Nawaz..vs..The State** (PLD 1994 SC 858) and **Ikram Hussain..vs..The State** (2005 SCMR 1487). The chemical examiners report is sufficient to prove that substance recovered from the vehicle was charas and heroin, which could be used to cause intoxication.

7. Adverting next to the contention of the learned counsel for the petitioner that while deciding the fate of a

petition for grant of bail, the Court is not to keep in view the maximum sentence provided by law for the charged offence, but the one likely to be imposed. It is now settled by the august Supreme Court of Pakistan that neither categorization of sentencing nor any guess work or speculative exercise could be undertaken by the Court at bail stage to enlarge an accused on bail in such crimes as laid down in **Socha Gul's case (2015 SCMR 1077)**. Even otherwise investigation is complete and challan has been submitted and trial is likely to commence. In such a situation the Courts normally and ordinarily avoids to grant bail on merits, lest it may cause prejudice to either side. The tentative assessment of the record leads me to the conclusion that there exists a prima facie case against the petitioner, which falls within the prohibition contained in Section 497 Cr.PC read with Section-51 of CNSA Act, 1997, therefore, he is not entitled to the concession of bail.

For what has been discussed above, the petition in hand being bereft of merits is hereby dismissed. However, the prosecution is directed to submit complete challan in the

Court within a fortnight and trial Court is directed to conclude the trial expeditiously, but not later than four months from the date of receipt of the file. Office is directed to send back the record of the case immediately.

Announced:

Dated. 28.08.2018

J U D G E

(S.B of Mr. Justice Shakeel Ahmad, Judge)

K. Ali