

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, BANNU BENCH
(Judicial Department)

Writ Petition No.1305-B of 2019

Shah Mehmood

Versus


The State

JUDGMENT

For Petitioner: Relative of the petitioner.

For respondents: Mr. Shahid Hameed Qureshi, Addl: A.G.

Date of hearing **15.01.2020**



SAHIBZADA ASADULLAH, J.- Through the instant petition, the petitioner Shah Mehmood seeks his release on bail in case FIR No.503 dated 25.11.2019 registered under section 9(d) of KP CNS Act, 2019 read with section 216 PPC at police station Pezu, District Lakki Marwat. Earlier, he was refused bail by learned Sessions Judge, Lakki Marwat vide order dated 29.11.2019. It is pertinent to mention that initially the petitioner had filed bail application before this Court which was converted into writ petition vide orders dated 10.01.2020, as the provisions of Code of Criminal Procedure, 1898 have been made applicable only to trials and appeals before a Special Court under KP CNS Act, 2019.

2. The prosecution story as mentioned in the FIR, in brief, is that on 25.11.2019, the complainant Zaheer Khan SHO received spy information that Proclaimed Offender Akhtar Amin charged in case FIR No.187 registered at police station

Pezu under section 302/324/34 PPC alongwith Shah Mehmood, accused of case FIR No.474 dated 04.11.2019 of police station Pezu, who is cousin of the Proclaimed Offender, was present near the house of Shah Mehmood and were having chars in their possession. On this information, the complainant alongwith police contingent rushed to the spot and conducted raid upon the house of Shah Mehmood. In the courtyard of the house, a person having shopper in his right hand was found who on seeing the police tried to run away but was overpowered and the shopper containing chars weighing 1015 grams was taken from his hand. On inquiry, the person disclosed his name as Shah Mehmood.

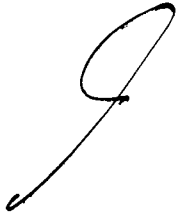
3. The learned counsel for the petitioner is not available due to strike announced by Khyber Pakhtunkhwa Bar Council. However, arguments of learned Addl: A.G heard and record perused.

4. Without going deep into merits of the case lest it may prejudice the case of either party, suffice it to say that vide memo dated 25.11.2019, five grams chars was separated for chemical analysis but neither any copy of application for sending the sample to F.S.L is available on record nor there is any report of the F.S.L which could show that the contraband allegedly recovered from the petitioner was in fact chars. Reliance in this respect is placed on the cases of Zahid Sultan. Vs. The State (2019 YLR 2798), Shehzad Khezhar Hayat. Vs.

The State (2014 YLR 849) and Faisal Munir. Vs. The State through Latif Khan ASI Choki Mayar (2013 P.Cr.L.J 1525).

In the case of *Shehzad Khezhar Hayat. Vs. The state (2014 YLR 849)* it was held that:-

“Without dilating upon the merits of the prosecution case or the plea of defence, suffice it to say that the alleged recovery of contraband charas has been made on 28.3.2013 and the samples separated from it for analysis were sent to the FSL on the same day but perusal of the record would show that no report of FSL is available on the file, but the FSL report regarding the vehicle in question is available on record. Non-availability of FSL report in respect of the contraband charas allegedly recovered makes the case of the accused-petitioner arguable for the purpose of bail because there is no proof whether the contraband was charas or otherwise.”



Moreover, the powers of seizure and arrest in public places have been conferred upon an authorized officer and authorized officer has been defined by the Act as (i) *an officer of the Directorate General, not below the rank of Sub-Inspector, authorized by the Director, or (ii) a Police officer/official not below the rank of Sub-Inspector, authorized by the Regional Police Officer.* Whether the SHO police station Pezu was duly authorized by the Regional police officer in this behalf or not is a question to be determined at the trial. Furthermore, Investigation in the case is complete inasmuch as complete challan has been drafted and ready to be put in Court and the petitioner is no more required by the local police for further investigation. Reliance is placed on the cases of *Faqir Hussain*

alias Bali. Vs. The State (2014 SCMR 1502) and Fazal Ellahi.

Vs. The State (2004 SCMR 235). In the case of Fazal Ellahi.

Vs. The State (2004 SCMR 235) it was held that:-

"It is informed that petitioners are in custody since 12th February, 2002 and after completion of investigation they have been challaned in the Court of Judicial Magistrate/Senior Civil Judge, Attock and are no more required to the investigating agency.

In above view of the matter, we are of the opinion that after completion of investigation, even if petitioners are kept in custody, it will serve no purpose."

Placing reliance on the above dicta, the tentative assessment of the available record makes the case of petitioner one of further inquiry entitling him to the concession of bail.

5. For the reasons mentioned above, this petition is allowed and the petitioner is admitted to bail on furnishing bail bonds in the sum of Rs.2,00,000/- (Rupees two lac) with two sureties, each in the like amount, to the satisfaction of Illaqa/Duty Judicial Magistrate.

6. Above are the detailed reasons for our short order of even date.

Announced.
Dt: 15.01.2020.
Habib/*

Habib
12/01/2020

N -
JUDGE
Gulab
JUDGE

(DB)
Hon'ble Mr. Justice Ikramullah Khan.
Hon'ble Mr. Justice Sahibzada Asadullah