

Judgment Sheet
IN THE PESHAWAR HIGH COURT,
PESHAWAR.

JUDICIAL DEPARTMENT.

JUDGMENT

Cr.MBA No.2729-P/2022.

Date of hearing 25.11.2022.

Imdad Ullah Vs The State.

Petitioner (s) by: Mr. Yousaf Ali
(Mardan) Advocate.

State by: Mr. Mujahid Ali Khan
AAG.

MOHAMMAD IBRAHIM KHAN, J:-The chronicle events under implication of petitioner Imdad Ullah in case FIR No.470 dated 30.07.2022 under Section 11-B KP CNSA 2019 (Act), registered at Police Station Nisatta District Charsadda, is that assertedly 803 grams meth amphetamine(Ice) were recovered from a plastic bag held by him; while 707 grams of contraband stuff was statedly recovered from co-accused Zubair. This is to say without exaggeration that initially these accused were faced with charges in another case FIR No.467 dated 29.07.2022, registered under Sections 457/380 PPC, at Police Station Nisatta, District Charsadda. While alike request for post arrest bail was sagged by the

learned Additional Sessions Judge-II/MCTC, Charsadda vide his order dated 19.08.2022; hence this application has been preferred

2. Having heard this application partly, some facts cropped up involving in this FIR were brought into the notice of this Court to the effect that the petitioner-accused and his co-accused were earlier booked in a theft case, which was compromised by the two sides subsequent to mutual understanding. It be in line for to state here that the alleged wrong custody of petitioner and co-accused was questioned under Section 491 Cr.PC. Later, however, the petitioner and the other one were disclosed of their involvement in the present case. To dig out the facts and verify so as to reach to the bottom of issue, the Seizing Officer Muhammad Kashif ASI and SHO concerned were summoned. They appeared before the Court and were asked to explain vis-à-vis implication of the petitioner. They did not spell out the truth and it was not found worthy of credence. Thereafter, the worthy District Police Officer, Charsadda was summoned and directed to bring to light the actual facts qua the offence, whose report submitted in due course, was found inadequate and not worthy of consideration vide order dated 17.10.2022, thereby he



was asked for his personal appearance with report which he submitted eventually and so placed on file.

3. Learned counsel for accused-petitioner while seeking for the petitioned relief, has levelled very serious allegation that the local police groping to hunt for gratification of Rs.35,000/- from the petitioner's father whilst the District Police Officer, Charsadda has submitted in his report that the police officers/officials have been strictly directed that in future, subsequent to recovery of huge quantity of narcotics, proper investigation/ inquiry must precede registration of FIR, so that only actual culprit is implicated/ apprehended reducing chances of sufferings of innocent people. The sort of report of the District Police Officer and the submission offered before the Court do not absolutely indicate the allegation of illegal gratification which accusation requires patent proof, which though is lacking in the circumstances, still the allegations of incriminating the petitioner accused in the FIR, owing to the alleged recovery of meth amphetamine subsequent to his refusal to please the local police with the inducement is to haunt the District Police Officer, who being the disciplinarian enforcer of the District Police besides

performing other responsibilities of the police under him.

4. The above being the backdrop of this case which makes it certainly one of further inquiry and also keeping in view the part recovery allegedly effected from the present petitioner-accused, the offence though grave in nature yet when the involvement of the petitioner may be on account of skepticism and on tentative assessment this case has been made out for grant of bail.

5. The police must lay heavy hands on the culprits involved in this ever rising filthy business of narcotics to salvage our society from its evils but it is equally the responsibility of police to remain candid and unbiased in pursuit of controlling crimes especially those involving narcotics and false implication of innocent people. While a strict law is necessary to control organized crime like drug trafficking and protect our youth from the menace of drugs abuse its brutal provisions are sometimes misused by the investigation agency and checking teams leading to false implication; thereby prolong unjustified and unlawful detention of individuals. In cases of recovery of contrabands particularly charas and Ice the police neither associates

private witnesses to authenticate such recovery nor do they offer plausible explanation for their omissions.

6. To avoid malice of unscrupulous policemen and even otherwise in cases when resourceful accused could win over independent witnesses, the police as a worthy force and body is required to switch over/turn over to Qanun-e- Shahadat Order 1984 ("Order") and make good use of Article 164 of *ibid* order. This provision through the legislature has provided that the evidence made available because of modern devices and techniques could be allowed by the Courts for consideration. The wordings of Article 164 of *ibid* provides as:-

164. Production of evidence that has become available because of modern devices, etc. — In such cases as the Court may consider appropriate, the Court may allow to be produced any evidence that may have become available because of modern devices or techniques.

7. The Hon'ble Supreme Court of Pakistan in cases of "Ali Haider alias Pappu Vs The State Jameel Hussain and others" (PLD 2021 Supreme Court 362), Mian Khalid Perviz Vs The State through Special Prosecutor ANF and another" (2021 SCMR 522), the Hon'ble Islamabad High Court in Criminal Appeal No.255-P/2019, titled, "Mian Khalid Pervaiz VS The

State & another, and the Hon'ble Uttarakhand High Court), in case of Shahrukh Vs State of Uttarakhand,

have laid emphasis on this aspect by observing that Courts have been empowered to receive and make use of such evidence collected through modern technologies in order to arrive to actual truth.

8. The reference found in the order and the case laws of the Hon'ble superior Courts suggest that the idea of making videography during narcotics recovery proceeding is not entirely novel. The police officials in Khyber Pakhtunkhwa are generally equipped with smart phones which would enable them to video-graph recovery proceedings. The videography as a device for crucial evidence can be presented in a credible manner. Even otherwise, reliance on technology would instill fairness, impartiality and confidence inspiring in the investigation process and shall not portray the impression of biasness and malice by some policemen during such proceedings. Where any police officer/Seizing officer/ Investigation Officer complains of non availability of video cameras, their own Department/Provincial Government can allocate requisite funds to purchase/provision of video cameras for making videography of recovery proceedings of

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drugs seizure and involvement of an accused beyond any doubt. The videography will certainly at best avoid false implication especially in drugs cases which has become practice of police to either gain for personal benefits or for the outcome of the nefarious designs of influential involving their enemies through ill reputed odd police officials.

9. The Courts must also mention the bitter reality of Anti Narcotics Force (ANF), Excise, Taxation & Narcotics Control and Customs Authorities, which are disciplined forces but at times also enrope innocent individuals in narcotics cases and; same is there with police of Khyber Pakhtunkhwa, against which complaints are pouring in regard to untrue implication of innocent persons in such cases. The Court reiterate that the only solution to assuage the allegations whether false or true, of planted recovery of narcotics lies in making recourse to the spirit of the order for use of videography right from seizing, when the recovery in the reported mode and manner, is effected and the investigation is also lasted with the belief that the same has actually been made from such persons or from the dwelling houses or from the vehicles so every recovery for proceeding of narcotics when especially the quantity of

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narcotics is considerably huge, the Seizing Officer shall make a video recording of the recovery proceedings, which shall be made available before the Court at bail stage while disposing the bail application failing which the credibility of the provincial police or any other force dealing to curb the menace of narcotics will be at stake while the individual under arrest may whisk of detention setting the prosecution case against him at naught. Suffice it to say that for any plausible reason if at all the Seizing Officer/ Investigation officer or Incharge of Police Station are unable to proceed in line with the shown technology based parameter, for any reason beyond their control, the reasons for the omission must be recorded in the investigation conducted/challan for appraisal of Courts.

10. The Provincial Police Officer, Khyber Pakhtunkhwa, Director Anti Narcotics Force Khyber Pakhtunkhwa Peshawar, Director General, Excise Taxation and Narcotics Khyber Pakhtunkhwa and Chief Collector Customs Khyber Pakhtunkhwa, to whom the copy of this order be communicated by the office of the worthy Registrar of this Court, are directed to ensure that at all costs, the recovery by the respective Police Force in narcotics cases shall be supported by

videography, so that only the real culprits be kept behind the bars and punished while those innocent persons are not entangled and further any more afflicted to severe mental and physical as well as financial agonies due to spurious/ bogus/ phony recoveries. In case of contingency of non availability of smart phones or video cameras with any of the Seizing Officer/ Investigation Officer of concerned Police Station to video-graph recovery proceedings of narcotics, the authorities concern will be under inevitable obligation to arrange the facility of video cameras or alike equipments to record events in either form in all respective Police Stations throughout Khyber Pakhtunkhwa. The worthy Provincial Heads of the above narcotics forces shall pass on the directions contained in this order to the field officers/ personnel for strict compliance accordingly.

11. Not least of all, let it be clear in very lucid explicit manner that the Courts concerned of the District Judiciary including Special Court(s) seized with the bail applications shall be ultra leery and avoid inertia to grant bail with creditable, bonafide and confidence inspiring reasons wherein allegations of malice and dishonesty are levelled and sensed against the officers/officials of police and personnel of these forces and where they

could not support the charge of recovery of narcotics cases falling under the prohibitory limb of Section 497 Cr.PC, specifically and all other cases in routine generally, with videography. Howbeit the department(s) concerned will require to prove their investigation in line with the above observations, all such Courts shall proceed in the matter in the illustrated direction after 15th April 2023, so that the quarters concerned till then could put in place their investigative apparatus accordingly.

Copy of this order shall be transmitted to the learned Judges of District Judiciary through learned Sessions Judges and Presiding Officers of the Special Court(s) of the province for compliance of the supra mentioned directions in letter and spirit.

12. In light of above observations, this Court finds that the petitioner is seemingly said to have been unjustly implicated in the case by giving the impression of false recoveries of narcotics, therefore, with such apprehension in my mind, I allow this bail petition and admit the petitioner to bail subject to furnishing bail bonds in the sum of Rs.100,000/- (One lac) with two sureties each in the like amount to the satisfaction of

learned Illaqa/Duty Judicial Magistrate/ trial Court concerned.

13. Suffice it to say that this order shall not prejudice the mind of the learned trial Judge conducting trial of petitioner-accused as the same is to be conducted and concluded on merit deciding wheel of fortune in either acquittal or conviction of accused.

The above are the detailed reasons of my short order of even date.

Announced.
25.11.2022.


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