

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

**BA No.198-B of 2023**

**Ijaz Khan**  
**Vs**  
**The State & another**

**JUDGEMENT**

Date of hearing: 14.4.2023

Petitioner by:

Mr. Imran Ali Shah Mandan Advocate

State by:

Hafiz Muhammad Hanif, Addl: AG.

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**FAZAL SUBHAN, J---** Through instant petition the petitioner

Ijaz Khan is seeking his post arrest bail in connection with case F.I.R No.186 dated 25.3.2023 registered under section 11 (B) KP CNSA of police station Mandan, District Bannu.

2. Nauman Khan S.H.O, police station Mandan reported on 25.3.2023 to the effect that he along with police party was present in the area for routine patrolling when in the meanwhile he received spy information that a person is present on the spot having huge quantity of contraband ice. Considering the information to be genuine, he along with police party went towards the spot of occurrence, where a person was found present on the spot, who on seeing the

police party started running but was apprehended and his body search was conducted. During his body search the complainant recovered one white colour plastic envelope which on checking was containing ice. On weighment the recovered ice was found 250 grams. One gram ice was separated for F.S.L and sealed in parcel while the remaining ice along with envelop were sealed in another parcel. The accused was arrested in the case and murasila was sent to the police station for registration of F.I.R.

3. Arguments heard and record perused.

4. After hearing the above arguments and considering the record tentatively, no doubt there is allegations of recovery of 250 grams of Ice from the possession of petitioner, however, murasila is silent about the police officials who were accompanying the complainant at the time of patrolling of the area and it is also not clear whether the sample/ parcel was taken to the Malkhana of police station by the complainant himself or it is handed over to any other police officer/official, hence safe and secure transit at this stage of the case is not forthcoming, unless

proved otherwise during trial. The alleged recovery has been shown on 25.3.2023, while as per receipt rahdari No.247, the samples were dispatched after 5 days, but after lapse of some 20 days the F.S.L report is not yet procured/ received to support the prosecution's version that the recovered sample was actually ice. At this juncture, it can also not be determined whether alleged recovered articles is Methamphetamine or Amphetamine, and if after analysis by the chemical analyst that the substance received to them is amphetamine then as per its definition in section 2 (aj) of the Khyber Pakhtunkhwa, Narcotics Substances Act, 2019 (Act), amphetamine being declared as psychotropic substance, hence would be covered under section 9 (c) of the Act, with maximum punishment of 7 years, thereby not falling within the prohibitory clause of section 497 cr.P.C. In the case of "Numan Khan –Vs-the State", Cr. Misc: (BA) No.398-B/2021 this Court has held that:-


"Perusal of the record reveals that on 28.06.2021 ICE weighing 500 grams were shown to have been recovered from possession of the accused/ petitioner,

however, when the sample taken from the recovered contraband was sent to FSL for physical and chemical examination its test reveals the sample as "amphetamine". Thus as per section 2(a) the Khyber Pakhtunkhwa Narcotics Substances Act, 2019, amphetamine being declared as psychotropic substance and its punishment will be dealt with under the provisions of section 9 of the Act, 2019. As stated above, 500 grams amphetamine were shown to have been recovered from possession of the accused/ petitioner, hence, his case comes under section 9 (c) of the ibid Act and punishment provided for the offence is up to 07 years as such case of the accused/ petitioner does not come within prohibition contained under section 497 Cr.P.C. In such like cases grant of bail is a rule and refusal is an exception. At this stage refusal of bail application of the petitioner may amount to his wrongful incarceration that could not be later on remedied, if he is acquitted."

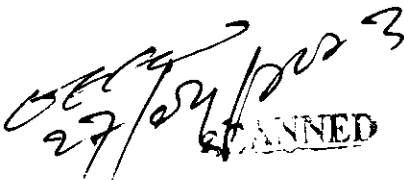
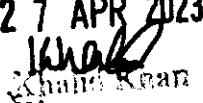
5. For what has been discussed above, it is held that a case for grant of bail has been made out, resultantly, this petition is accepted and petitioner is released on bail, subject to furnishing bail bonds of Rs. 3,00,000/-(rupees three lac) with two local and reliable sureties to the satisfaction of Illaqa Judicial Magistrate/ MOD concerned.

These are the detailed reason of my short order of even date.

**Announced**  
14.4.2023  
*Ihsan.*

  
**JUDGE**

(S.B)  
Hon'ble Mr. Justice Shahid Khan.

  
**27 APR 2023**  
  
Shahid Khan