

IN THE PESHAWAR HIGH COURT PESHAWAR

W.P No 1128/2016

Yaqoob S/o Lal Faqir
R/o Ghundi, Abdal Khel, Kuki Khel Tehsil, Jamrud Khyber Agency
know convict 14 years Peshawar Jail Peshawar **Petitioner.**

VERSUS

1. Political Agent Khyber Agency Khyber House Peshawar Cantt.
2. Commissioner Peshawar Division. The Mall Peshawar.
3. Tribunal F.C.R Federal Judicial Complex Phase 6 Hayatabad Peshawar.
4. Superintendent Central Jail Peshawar.
5. Inspector General Prisons Khyber Paktunkhwa.
6. Govt of Khyber Paktunkhwa, through Secy Home Department Civil Secretariat Peshawar.
7. Govt of Pakistan through Secretary Interior Pak Secretariat Islamabad..... **Respondents**

PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN

Respectfully Sheweth:

Brief Facts Leading to this Writ Petition are as under:-

1. That petitioner belongs to Kuki Khel Tribe section of AFRIDI tribe and is R/o Ghundi, Abdal Khel, Tehsil Jamrud Khyber Agency who is Presently confined in Central Prison Peshawar as convict prisoner sentenced to 14 years R.I in a Narcotic case.
2. That on 5.12.2012 a raid was conducted on the house of the petitioner in which 16 KG heroin was recovered as is alleged in the special report of Line Officer Jamrud. **Copy of the special report is annexure "A".**
3. That on the basis of the said report an FIR was registered in Jamrud on 5.12.2016. The petitioner and two others were therefore, arrested. **Copy of the FIR is annexure "B".**
4. That P.A Khyber tried the petitioner u/s 9(C) of CNS Act 1997 and thus drew an order of reference in which four (4) JIRGA members were appointed and issues were also framed. **Copy of the order of reference is annexure "C".**

JUDGMENT SHEETIN THE PESHAWAR HIGH COURT, PESHAWAR.JUDICIAL DEPARTMENTW.P No: 4128-P of 2016JUDGMENT

Date of hearing.....17.05.2017.....

Appellant(s)/Petitioner (s). (*Yaqoob*) by *Mr. Abdul Lateef Afridi, Advocate*Respondent (s). (*Political Agent Khyber Agency*) by *Mr. Fida Gul, Advocate*
Syed Qaiser Ali Shah, AAG and Munzoor Khalil, DAO for
the Respondents.

MUHAMMAD AYUB KHAN :-J:

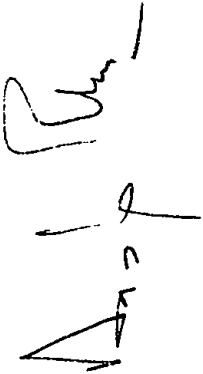
Yaqoob,

petitioner, seeks the constitutional jurisdiction of this

Court under Article 199 of the Constitution of Islamic

Republic of Pakistan, 1973 and praying that;

"It is therefore, humbly prayed that by accepting this writ petition the conviction and sentence of the petitioner awarded to him by P.A Khyber vide order dated 04.01.2013 and was confirmed respectively by Commissioner FCR and FATA Tribunal on 04.04.2014 and 17.06.2014 under Section 9 (C) CNSA be declared is unlawful without jurisdiction and accordingly the petitioner be ordered to be released forthwith."



2. As per writ petition, on 05.12.2012, raid was conducted on the house of the petitioner, in which 16 kilograms heroin was recovered and FIR was registered against the petitioner and two others. The Political Agent Khyber Agency tried the petitioner under Section 9 CNSA 1997. Four jirga members were appointed and issues were framed. The Jirga members obtained the consent of the petitioner and gave their unanimous verdict vide order dated 04.01.2013. The respondent No.1 accepted the jirga award and convicted and sentenced the petitioner to 14 years R.I and a fine of Rs. 600,000/- (Six lac) or in default of payment further to undergo 03 years S.I. The appeal before Commissioner FCR was dismissed on 04.04.2014. The revision petition before the FATA Tribunal Peshawar was dismissed on 17.06.2014.

3 Now the petitioner has invoked the constitutional jurisdiction of this Court through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

4. Through Notification NO.F.12(3)—98-POB, dated 19.11.2009, the Political Agents were empowered to try and punish the accused charged for offences under the Control of Narcotic Substances Act, committed within FATA. Under the Provisions of Section 48 of the

CNS Act, the appeal from the order of the Special Court, constituted under the CNS Act, shall lie to the High Court which shall be heard by a Bench of not less than two Judges, however, once the President of Pakistan through the above S.R.O has conferred jurisdiction on the Political Agent and has extended the applications of the Anti-Narcotics Force Act, 1997 and Control of Narcotic Substances Act 1997 to FATA then, the hierarchy setup under the FCR shall continue to exercise its jurisdiction and authority in these cases by necessary implications because jurisdiction of the High Court is not extended to FATA, in view of Sub-Article (7) of Article 247 of the Constitution of Pakistan, 1973. **(PLD 2013 Peshawar 23)**

5. Persistent view of the matter is that the schedule to the FCR was amended and offence under the Control of Narcotic Substances Act, 1997, was made tribal by the authority who was competent to try the offence under the FCR. The offence under the Control of Narcotic Substances Act, 1997, can competently be tried by the Political Agent and appeals/revision there against shall lie to the same hierarchy.

6. Jurisdiction of the High Court has been ousted in the matters of Federally Administered Tribal Areas--- Neither the High Court nor the Supreme Court might

entertain any matter pertaining to the tribal areas. The schedule to the FCR was amended and offence under the Control of Narcotic Substances Act, 1997, was made tribal by the authority who was competent to try the offence under the FCR. While the Control of Narcotic Substances Act, 1997, had already been extended by virtue of S.R.O. No.1295 (1) 198, dated 16.11.1998 in compliance with Article 247 (3) of the Constitution of Islamic Republic of Pakistan, 1973. The offence under the Control of Narcotic Substances Act, 1997, can competently be tried by the Political Agent and appeals/revision there against shall lie to the same hierarchy. Whereas jurisdiction of the High Court has been ousted in the matters of Federally Administered Tribal Areas by virtue of Article 247 (7) of the Constitution. (PLD 2014 Peshawar 186).

7. Keeping in view above this writ petition fails and stands dismissed.

Announced:
17.05.2017


CHIEF JUSTICE
JUDGE