

**JUDGMENT SHEET
PESHAWAR HIGH COURT PESHAWAR
JUDICIAL DEPARTMENT.**

Cr.M/BA No. 828-P/2017

JUDGMENT

Date of hearing: 12.5.2017

Petitioner: (Riazur Rehman) by Mr. Muhammad Yousaf Orakzai,
Advocate.

Respondent: (The State) by Mr. Muhammad Asghar Khan
Kundi, Advocate.

WAQAR AHMAD SETH, J.- Petitioner, Riaz-ur-

Rehman son of Haji Rehman, having been involved in case FIR No. 78 dated 3.11.2015 under Section 9(c) Control of Narcotic Substances Act, 1997 registered at Police Station ANF, Peshawar, was refused bail by this Court on 27.1.2017 with direction to the learned trial Court to conclude trial within forty-five (45) working days. As trial of accused-petitioner could not be concluded according to the direction of this Court, the petitioner applied for bail before the learned trial Court but the same has been dismissed vide order dated 12.4.2017; hence, the instant petition for the same purpose.

2. Charge against the petitioner is that he was found in possession of five (05) Kgs charas.

3. Arguments heard and record perused.

4. Perusal of the record would reveal that on 3.11.2015, the petitioner was arrested by the ANF Police having in possession of five (05) Kgs charas. After arrest, the petitioner applied for bail before the learned trial Court but the same was dismissed and he had filed bail application before this Court for the same purpose. The said bail application was dismissed by this Court vide order dated 15.2.2016 with direction to the prosecution to submit complete challan against the petitioner within a period of fortnight and the learned trial Court should conclude trial within a period of four (04) months. The above said directions were not complied with, hence, the petitioner preferred bail petition before the learned trial Court but the same was dismissed and he again filed bail petition before this Court. This time too, the bail application of the petitioner was dismissed vide order dated 27.1.2017 with

direction to the learned trial Court to conclude trial within forty-five (45) working days positively but the learned trial Court, despite unambiguous directions of this Court, has not examined a single witness till 9.5.2017 as evident from its order sheet. Had the learned trial Court been serious and conscious qua direction of this Court, it could proceed with the trial on day-to-day basis for compliance of order of this Court in a letter and spirit but such is not the situation herein.

5. In the case of **Jadeed Gul vs. The State** (1998 SCMR 1124), the Hon'ble Apex Court has held that:-

“S. 497—Penal Code (XLV of 1860), 5.274/275/276/420/483/482/485/487/467 /468/471---Drugs Act (XXXI of 1976), S. 23/27—Bail, grant of ---Trial of accused had not been concluded within two months despite direction of Supreme Court as Drug Court was not functioning due to non-availability of the Presiding Officer---Prosecution was unable to give time within which trial was likely to be concluded—Case of accused did not fall under the prohibitory clause of S. 497(1), Cr.P.C. ---Accused was admitted to bail in circumstances”.

Similarly, in the case of **Muhammad Aslam vs. The State** (1999 SCMR 1092), the Hon'ble Apex

Court has held that:-

“S. 497---Penal Cod (XLV of 1860), S. 302/324/148/149—Bail—Despite direction of High Court trial against accused had not been completed by the Trial Court within the specified period—Prosecution was unable to give any explanation for non-compliance of the said order of High Court—Petition for leave to appeal was converted into appeal which was allowed and the accused was admitted to bail in circumstances”.

Likewise, in the case of **Himesh Khan vs. The National Accountability Bureau (NAB), Lahore and others** (2015 SCMR 1092), the Hon'ble Apex

Court has held that:-

“Speedy trial was the alienable right of every person, therefore, even if the provision of S. 497, Cr.P.C. in ordinary course was not applicable to an accused person facing charges under National Accountability Ordinance, 1999, the boarder principle of the same could be pressed into service in hardship cases to provide relief to a deserving accused person incarcerated in jail for a shockingly long period”.

6. Petitioner is behind the bars since 3.11.2015 and twice directions were issued to the

learned trial Court to conclude trial but the learned trial Court, after lapse of more than a year, has examined only one witness and if the learned trial Court shall proceed the trial with such a speed, the same would not conclude in near future, therefore, this Court is left with no option but to release the accused-petitioner on bail.

7. Accordingly, this bail application is accepted and the accused-petitioner is admitted to bail provided he furnishes bail bond in the sum of Rs. 400,000/- (Rs. Four lacs) with two sureties each in the like amount to the satisfaction of Judicial Magistrate.

8. Above are the reasons of my short order of even date.

J U D G E

Announced.
12.5.2017

Nawab Shah