

**IN THE PESHAWAR HIGH COURT,
PESHAWAR**
(Judicial Department)

Afsar Khan Vs The State.

Date of hearing. **06.05.2020.**

Petitioner(s) by: **M/s Zohra Durrani & Sidra Naz
Advocates.**

State by: **Mr. Tariq Kakar, Special Prosecutor
for ANF.**

IKRAMULLAH KHAN, J:- Through the instant bail petition, petitioner Afsar Khan seeks his release on bail in case FIR No. 60/2020 dated 12.4.2020, registered under Section 9-C/ 15 CNSA 1997, at Police Station ANF, Peshawar, wherein he is charged for possessing two packets of Charas total weighing 2400 grams, which was recovered by complainant Amir Ullah, Subedar Chitral Scout Khyber Rifles HQ, from the possession of petitioner.

2. I have heard learned counsel for petitioner, learned AAG for the State and gone through the available record.

3. As per contents of FIR, the petitioner was arrested by Chitral Scout Khyber Rifles HQ on 12.4.2020 on the allegation of having in possession of 2400 grams Charas, who was then handed over to the ANF officials and a case under Section 9-C CNSA 1997, was registered against him which Act has already been repealed under Section 59 of the Khyber Pakhtunkhwa Control of Narcotics Substances Act 2019, which reads as under:-

“59. Repeal and savings.---(1) The Control of Narcotics Substance Act, 1997 (Act No. XXV of 1997), to the extent of cultivation, possession, selling, purchasing, delivery and transportation etc. within the Province, to the extent of the Khyber Pakhtunkhwa is hereby repealed.

(2) Notwithstanding the aforesaid repeal, anything done, action taken, rules made and notification or order issued under the aforesaid Act, shall, so far not inconsistent with the provisions of this Act, be deemed to have been done, taken, made or issued, under this Act shall have effect accordingly.

4. Later on 31st January 2020, after promulgation of Khyber Pakhtunkhwa Control of Narcotics Substances (Amendment) Ordinance, 2020 a new sub-section 3 was added after sub-section 2 of Section 59, whereby it was provided that:

“(3)all the actions taken, proceedings commenced and things done by the Department or Police from 4th September 2019 till the commencement of the Khyber Pakhtunkhwa Control of Narcotics Substances (Amendment) Ordinance 2020, shall be

*deemed to have been validly taken,
commenced and done under this Act."*

5. Keeping in view the above provisions, it is clear that all the proceedings done under the repealed Act (Control of Narcotics Substances Act 1997) were given protection by the newly amended Ordinance 2020, till 31.1.2020, and thereafter, no law enforcing agency is empowered to register cases under the repealed Act in the Province of Khyber Pakhtunkhwa but even then the Seizing Officer handed over the case to ANF officials instead of local/regular police available at Khyber, who registered the instant case on 12.4.2020, under the repealed Act, which is against the law.

6. No doubt the Control of Narcotics Substances Act 1997 is still in field in the other parts of the country but in the province of Khyber Pakhtunkhwa presently the newly promulgated Act is in field and there is nothing on record which could suggest that the same has been declared ultra vires or repealed so all the cases relating to arrest, seizure etc in respect of narcotics are to be registered in this province under the newly Act (Khyber Pakhtunkhwa Control of Narcotics Substances Act 2019) until and unless it has been declared ultra vires or repealed.

7. For what has been discussed above, this bail petition is allowed and petitioner is admitted to bail provided he furnishes bail bonds to the tune of Rs.200,000/- (Two lac) with two sureties each in the like amount to the satisfaction of learned Illaqa/Duty Judicial Magistrate/ trial Court concerned, who shall ensure that the sureties are local, reliable and men of means.

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

Announced:
06.05.2020.


JUDGE