

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, PESHAWAR
(Judicial Department)

Cr.MBA 1864-P of 2015.

JUDGMENT

Date of hearing 25.11.2015

Petitioner by: Mr. Jawad Khan Advocate.

Respondent /State by: Syed Sikandar Hayat Shah, AAG.

MUHAMMAD DAUD KHAN, J.- Shah Pur, the petitioner seeks his post arrest bail in case FIR No.491 dated 12.8.2015 registered under Section 9-C CNSA, at P.S. Nasir Bagh, Peshawar.

2. As per prosecution case, during Nakabandi conducted on spy information regarding smuggling of narcotics, the local police intercepted Alto Motorcar bearing No.LRR-0859, being driven by the petitioner, accompanied by co-accused Amir occupying front seat while Farooq Javed & Kashif Ali were occupying the rear seat of the said Car. On search, one packet heroin weighing one Kg was recovered from the secret cavity of the driver gate. On personal search from all the four accused, 500/500 grams heroin (Total 2 Kg) were recovered.

Consequently, the accused were arrested, contraband alongwith vehicle were taken into possession and a case vide FIR mentioned above was registered against the accused.

3. Arguments heard and record perused.

4. As per FIR, from all the three co-accused 500/500 grams heroin were recovered whereas 500 grams was recovered from the possession of petitioner and one Kg was recovered from the secret cavity of driver gate of the Car. Learned counsel for petitioner mainly stressed on the plea of principle of consistency that all the three co-accused from whose possession 500/500 grams heroin were recovered, are availing the concession of bail. However, the role of petitioner being driver of the vehicle is different than the role of co-accused who were occupying other seats as the petitioner being driver of the vehicle, was Incharge of the same and all the articles lying therein would be under his control and possession, so recovery of 1000 grams heroin from secret cavity of the said vehicle would have been in the conscious knowledge of petitioner and recovery of total 1500 grams of heroin made jointly from his

possession and secret cavity of his car having conscious knowledge about the same being driver of the vehicle. Besides, it is well settled principle that a person who is on driving seat of the vehicle, shall be held responsible for transportation of the narcotics having knowledge of the same as no condition or qualification has been made in Section 9-C of CNSA that the possession should be an exclusive one and can be joint one with two or more persons. The wisdom is derived from the case titled, **“Kashif Amir Vs The State”(PLD 2010 SC 1052).** Therefore, the petitioner cannot get benefit of the plea of principle of consistency. The recovery of narcotics is fully supported by the marginal witnesses of recovery memo being prepared on the spot in their presence as well as positive FSL report according to which the samples of recovered contraband were heroin. No malafide or ill-will has been pointed by the petitioner on the part of local police regarding his false involvement in the present case which could be made a ground for his release on bail.

5. Apart from above, it is also held by the august Supreme Court in the case titled, **“Socha Gul Vs The State” (2015 SCMR 1077)**, that offences punishable under CNS Act of 1997 are by its nature heinous and considered to be the offences against the society at large and it is for this reason that the statute itself has provided a note of caution under Section 51 of CNSA before enlarging an accused on bail in the ordinary course. When we refer to the standard set out under section 497 Cr.PC, for grant of bail to an accused involved in an offence under Section 9 CNSA, even on that basis we find that an accused charged with an offence, prescribing various punishments, as reproduced above, is not entitled for grant of bail merely on account of the nature or quantity of narcotics and that appreciation of evidence is not permissible at bail stage and secondly in such situation, looking to the peculiar features and nature of the offence, the trial Court may depart from the normal standards prescribed in the case **of “Ghulam Murtaza Vs The State” (PLD 2009)** and award him any other legal punishment, thus in our opinion, ratio of judgment in the case of

Ghulam Murtaza (cupra) is not relevant at bail stage.

6. The prosecution has collected sufficient material connecting the petitioner with the commission of a non-bailable offence, therefore, he is not entitled to the concession of bail at this stage.

7. In view of what has been observed above, this petition being devoid of merit is dismissed. However, the above findings are tentative in nature for the disposal of instant bail petition only and shall not influence the mind of the trial Court who is expected to decide the matter purely on merit and in accordance with law.

Announced.
25.11.2015.

JUDGE

"A.Qayum".