

**Judgment Sheet**  
**IN THE PESHAWAR HIGH COURT,**  
**PESHAWAR.**

***JUDICIAL DEPARTMENT.***

**JUDGMENT**

**Cr.MBA No.1876-P/2022.**

**Date of hearing 04.07.2022.**

**Zeeshan alias Shanay Vs The State.**

petitioner (s) by:           **M/s Shaibar Khan &  
Sheeraz Ali Advocates.**

State by:                   **Mr. Khaled Rehman  
AAG.**

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**MOHAMMAD IBRAHIM KHAN, J:-.**

Through this bail petition, petitioner Zeeshan alias Shanay seeks his release on bail in case FIR No.215 dated 28.04.2022, registered under Section 9-D KP CNSA 2019, at Police Station Tordher, District Swabi.

2. As per prosecution case, after obtaining search warrant from the competent Court, the house of petitioner was raided by local police; where in presence of petitioner

from a cupboard of his residential room, five packets of Charas total weighing 4975 grams were recovered. Consequently the contraband was taken into possession, petitioner was arrested and a case vide FIR mentioned above was registered against him.

**3.** Arguments heard and available record gone through.

**4.** Perusal of record reveals that though search warrant for conducting raid on the house of petitioner was obtained from the Court of learned JM-III, Lahor (Swabi) but neither date of its issuance nor the date for which said warrant has been issued for raid on the house of petitioner is mentioned therein. Moreover, no independent witness has been associated by local police at the time of raid on the said house, which is mandatory under Section 31 KP CNSA 2019, according to which in case of search of dwelling house Section 103 Cr.PC shall strictly be observed. No other family member of petitioner has been arrested

during raid upon the said house, nor shown present at relevant time, making it a case of further inquiry under Section 497(2) Cr.PC.

**5.** No document qua ownership of the house is available on file; which could suggest that the said house was ownership of petitioner. Besides, the alleged contraband has not been recovered from immediate possession of petitioner; rather it has been recovered from a cupboard of a residential room of the house occupied jointly, so it could not be stated with certainty that the alleged contraband was ownership of petitioner; which fact could better be determined by learned trial Court after recording prosecution evidence.

**6.** Apart from above, petitioner and his other family members had filed numerous complaints against the SHO and other police officials of P.S. Tordher before the DPO Swabi as well as I.G. Police Khyber Pakhtunkhwa, for harassing the petitioner and their family members. Even an

application under Section 22-A Cr.PC was also submitted before the learned Justice of Peace for registration of FIR against the above officials, due to which the question of false implication of petitioner in the instant case could not be ruled out.

7. So far as registration of other criminal cases against petitioner is concerned, admittedly in two of the said cases, petitioner has been acquitted by the learned trial Court vide judgment/order dated 09.06.2021 and 24.06.2022 respectively; whereas he has not been convicted in the remaining cases. Besides as per observation of apex Court held in case of **“Qurban Ali Vs The State” (2017 SCMR 279)**; impact of the other criminal record against accused is not relevant for disposal of the instant petition; rather this Court is only seized of the instant bail application. Despite remaining in police custody for sufficient time neither any further recovery of incriminating article has been recovered

from the possession of petitioner nor he made any confession before the competent Court which could connect him with the commission of offence. He is behind the bar since his arrest and no more required to the Investigation Agency for further interrogation; therefore, this bail petition is allowed and petitioner is admitted to bail subject to furnishing bail bonds in the sum 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 *ibid* observations are the tentative assessment of the material available on the record of the case, which shall not influence the mind of the learned trial Court in any manner at the time of trial.

***Announced.***  
***04.07.2022.***

***J U D G E***