

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

**Cr.Misc.BA.....No...1116-P.....of...2015.....**

**JUDGMENT**

Date of hearing.....06-07-2015.....

Petitioner (Mst. Sheerina )...by Mr. Fazal Rahim, Advocate.....

Respondent(State) by Mr.Umar Farooq, Addl.AG.....

**YAHYA AFRIDI, J.-** Mst. Sheerina, petitioner herein, seeks bail in case FIR No.133 dated 04-05-2015 for an offence under section 9(c) of the Control of Narcotic Substances Act, 1997 ("**CNSA**") registered at Police Station Lachi in District Kohat.

2. As per contents of the FIR lodged on 04-05-2015 at twelve noon, Saadat Khan SHO of Police Station Lachi alongwith other police personnel were present for checking of vehicles at Lachi Toll Plaza, where in a flying coach of white colour, a veiled lady with a large plastic bag in her hand sitting on the second seat behind the driver's seat was de-boarded and, on search of her bag by the lady police constable Saira Bano, recovered five packets of '*charas (Gardda)*', each weighing one kilogram, therefrom. The accused-petitioner was

arrested on the spot and a '*murasila*' was forwarded to the concerned police station, where the present case under the CNSA was registered against her.

3. Valuable arguments advanced by the learned counsel for the parties were considered and the available record perused.

4. Lest this Court passes any findings on the merits of the case, which may prejudice the case of either party during the trial, suffice it to state that in view of recovery effected from the direct possession of the accused-petitioner, '*prima facie*', the accused-petitioner is connected with the commission of offence, which falls within the Prohibitory Clause of Section 497 of Cr.PC and hence, she is not entitled to the concession of bail.

5. It would be worthwhile to mention at this stage that this Court in the case reported as **Iftikhar Khan Vs. State (PLJ 2015 Cr.C. (Peshawar) 63)**, wherein the quantity of the contraband had played a very crucial role determining the post arrest bail of an accused, held that:

*“Lest this Court passes any findings, which may prejudice the case of the parties during trial, suffice it to state that though the offence is not*

*bailable under Section 51 of the CNSA but, keeping in view the quantity of recovered contraband, the petitioner is not likely to get maximum punishment provided in the Statute because the quantum of sentence has to commensurate with the quantum of substance recovered, if case against him is proved at the trial. There is also no evidence on record that petitioner is a previous convict or involved in similar cases. Moreover, since this Court in Cr.Misc.No.524-P/2014 decided on 9-5-2014 has already granted bail in 1200 grams heroin to the petitioner herein, therefore, this Court also follows the same.”*

6. The Apex Court, however, has in a recent case, while considering the offences punishable under the CNSA to be heinous in nature against the society at large, repelled the views of this Court in the above cited case in the judgment in the case titled **Socha Gul Vs. State** (Cr.PLA No.15/2015) as under:-

*“It is pertinent to mention here 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 CNS Act of 1997 before enlarging an accused on bail in the ordinary course. When we refer to the standards set out under section 497 Cr.PC for grant of bail to an accused involved in an offence under section 9(c) of*

*CNS Act of 1997, 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 narcotic substance, being four kilograms. Firstly, as deeper 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 (supra) and award him any other legal punishment. Thus, in our opinion, ratio of judgment in the case of Ghulam Murtaza (supra) is not relevant at bail state.”*

7. Before parting with the order, this Court finds it necessary to remind the trial Court that the observations rendered by it while disposing of the bail application are not to be considered during the trial of the accused. In this regard the august Supreme Court of Pakistan in **Shuaib Mehmood Butt Vs. Iftkharul Haq** (1996 SCMR 1854) has rendered clear guidance, which is to the effect that:-

*“However we would like to point out in no certain terms that the observations made by the High Court in the orders granting bail and by us in this order are confined to tentative assessment made for the purpose of disposal of bail applications and not intended to influence the mind of the trial court, which is free to*

*appraise the evidence strictly according to its merits and the law of the time of disposal of the case, which of course it is needless to say, is the function of the trial court”.*

8. For the reasons stated hereinabove, the application for bail being without substance is dismissed. However, the trial Court is directed to conclude the trial of the petitioner expeditiously.

**J U D G E**

**Announced on  
06th July, 2015**