

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

Cr.M/BA No. 1069-P of 2017

JUDGMENT

Date of hearing 12.6.2017

Petitioner (Zahid Hussain) by Mr. Hussain Ali, Advocate.

Respondent (The State) by Mr. Muhammad Sohail, AAG

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**ABDUL SHAKOOR, J.-** Petitioner, Zahid Hussain, seeks his release on bail in case FIR No.362 dated 14.05.2017 under sections 15-AA/5 Explosive registered at Police Station, Daudzai, Peshawar.

2. The brief facts of the case are that on 14.05.2017 at 2030 hours, the complainant, Syed Sardar Ali Shah, SHO P.S. Daudzai was on combining operation in the area, he also conducted raid at the house of one Ijaz son of Mir Ahmad Shah, who is a proclaimed offender in case FIR No.69 dated 27.1.2017 registered under sections 302/324/34 PPC of Police Station, Daudzai, Peshawar was wanted by the police, but the said P.O. was not found at his house, however, the police party found the present accused/petitioner in the house of said P.O. The personal search of the accused/petitioner led to the recovery of a 9 MM Pistol bearing No.013008-10-CN-236 loaded

alongwith 26 live rounds of the same bore and 03 hand grenades. The accused/petitioner could not produce any valid license or permit for carrying the said deadly weapons and explosives, hence the FIR.

3. The learned counsel for the petitioner contended that the accused/petitioner is innocent and has falsely been implicated in the case with ulterior motive by the police; Further contended that under Section 7 of the Explosive Substances Act, 1908 permission of the Provincial Government must be obtained but in the instant case no permission has yet been obtained. Further submitted that there is no mentioned serial numbers with regard to hand grenades; that there is no independent evidence against the accused/petitioner on the file as required under Section 103 Cr.PC; Learned counsel for petitioner further argued that the accused/petitioner is first offender and never involved previously in such like cases; and that the charge leveled against the accused/petitioner requires further probe into his guilt and as such, he is entitled to the concession of bail.

Learned counsel for the petitioner placed reliance on case titled **Shah Zaman Vs The State (2012 MLD 410), Habib-ur-Rehman Vs. The State (2012 YLR 665), Zain-ul-Abidin Vs. The State (2010 MLD 173) and Karamat Khan Vs. The State (2011 YLR 1390).**

4. On the other hand, the learned AAG on behalf of State opposed the arguments of learned counsel for the petitioner and contended that the accused/petitioner is directly charged in the FIR and recovery has been effected from his personal possession. Further contended that the offence, with which the petitioner is charged heinous in nature and also falls within the prohibitory clause of Section 497 Cr.PC. In these circumstances, the accused/petitioner is not entitled to the concession of bail.

5. I have heard learned counsel for the petitioner, learned AAG on behalf of State and perused the available record with their assistance.

6. Perusal of record would show that no permission/sanction from the Provincial Government/competent authority is available on record as required under Section 7 of the Explosive Substances Act, 1908, for holding a trial in the case of accused/petitioner, which is mandatory. The record would further reveal that no public witness of the locality as required under Section 103 Cr.PC was associated with the recovery proceedings. The Expert report is also not available on record to ascertain as to whether the recovered arms and ammunition were in working condition or not. The recovery of three hand grenades from one side pocket is

also intolerable/impossible and also no serial number has been mentioned of the said hand grenades and thus case of the accused/petitioner is made out that of further inquiry. Besides, the petitioner is behind the bars since his arrest and there is no prospect of conclusion of his trial in the near future.

7. For the reasons discussed above, the instant bail application is allowed and the accused/petitioner is admitted to bail subject to furnishing bail bonds in the sum of Rs.2,00,000/- with two sureties each in the like amount to the satisfaction of Illaqa/Duty Judicial Magistrate. The sureties must be reliable and men of means.

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

**Announced.**  
**12.06.2017**

(Ayub)

**J U D G E**