

IN THE PESHAWAR HIGH COURT,
PESHAWAR,
[Judicial Department].

Cr.Misc.BA No.3128-P/2019

Manzi Gul son of Said Nabi,
 r/o Ali Masjid Jamrud, District Khyber.

Petitioner (s)

Versus

The State

Respondents

For Petitioner :-

For State

:-

Mr. Muhammad Nadir Shah, Advocate.
Mr. Shumail Ahmad Butt, Advocate General
along with Mr. Atif Ali, AAG. Abbas
Majeed Marwat, Director FSL and Bilal
Khan, Government Analyst FSL(on court
notice).

Date of hearing:

16.12.2019

ORDER

ROOH-UL-AMIN KHAN, J:- Petitioner Manzi Gul son of Said Nabi, seeks post arrest bail in case FIR No.49 dated 12.09.2019, registered under section 9 (c) Control of Narcotic Substances Act, 1997, at Police Station Jamrud, District Khyber.

2. According to First Information Report (FIR) on 12.09.2019 at 1700 hours, Gula Jan SHO along with other police officials named in the FIR, intercepted an Alto Motorcar bearing Registration No.RIA. 486, near *Attock Petrol Pump Takhta Baig Jamrud road*. Its driver was deboarded who on query disclosed his name as Manzi Gul (the petitioner). On search of the motorcar, the complainant SHO recovered some 21 packets heroin, each weighing one

Manzi Gul

Kilogram, making the total of 21 Kilograms, from beneath its seats and secret cavities made in its doors. From each packet, he separated 5 grams heroin and sealed the same in parcels as samples for chemical analysis by the FSL, hence, this case.

3. Arguments of learned counsel for the parties heard and record perused.

4. Before advertng to merits of the case, I deem it appropriate to mention here that on 29.11.2019, this case came up for hearing before a Bench graced by his lordship Mr. Justice Sahibzada Asadullah. During the course of arguments, it transpired that no FSL report qua the samples separated from the alleged recovered heroin is available on record. After sometime, the worthy AAG produced photocopy of the FSL report, perusal of which revealed that the same was about "**Chars**" whereas in the FIR, twenty one Kilograms heroin has been shown recovered. In this view of the matter, the worthy AAG was directed to ensure production of original FSL report on the next date of hearing. In compliance with the aforesaid order, on 09.12.2019, original FSL report was placed on record, according to which the 21 samples were opined to be "**heroin**", however, erasure was noticed on the FSL report whereby word "**heroin**" was subsequently added by erasing the word "**Chars**", but the mischief persisted and continued to exist in the

Asadullah

column of "Physical examination" overleaf the said report, wherein words "**brown solid**" have been mentioned. In view of the above, the worthy Advocate General, was put on notice to personally appear before the Court for today. Similarly, the Director Forensic Science Laboratory (FSL) Police Investigation Khyber Pakhtunkhwa, Peshawar, was also directed to attend the Court today.

5. The moment the case was taken up for hearing Mr. Abbas Majeed Marwat came to the rostrum and submitted that on his posting as Director FSL, a lot number of pending FSL reports including the one in the instant case, were signed by him in hurry. The FSL report of the instant case was subsequently rectified by him by erasing the word "Chars" and adding "heroin". Mr. Bilal Khan Government Analyst FSL, disagreeing with the statement of the Director FSL, stuck to his earlier report according to which all the 21 samples have been opined to be "Chars". He added that the police official had dispatched the samples of chars for analysis, which were subjected to chemical test and were opined as "chars". While shifting responsibility on the police, he denied the erasure and rectification in the FSL report.

6. The worthy Advocate General present in the court when confronted with the contradictory stances of the above officials/Officers of the FSL and tampered

FSL report, he submitted that an inquiry has already been initiated in the matter which is yet to be finalized.

7. Be that as it may, it appears from record that petitioner has been arrested red handed at the spot and huge quantity of heroin weighing 21 Kilograms has been shown recovered from the vehicle which was in his exclusive possession and control. Factum of recovery of heroin find mention in the Murasila, FIR and recovery memo. Similarly, the version of the Seizing Officer is corroborated by witnesses of the recovery proceedings in their statements recorded under section 161 Cr.P.C. Thus, in presence of the ocular account of the Seizing Officer and witnesses to the recovery memo, mere contradictory FSL report which definitely seems to have been intentionally manipulated for some extraneous consideration and inquiry in this regard is in progress, would not be sufficient to entitle the petitioner for bail at this stage.

8. Resultantly, this petition being meritless is hereby dismissed.

9. Before parting with the order, I would add that this Court has taken serious notice of the detestable game played by the concerned/responsible officials of the Police and the FSL, Peshawar in the case of a huge quantity of 21 Kilograms heroin, which smells and indicates towards the intentional extra ordinary

For the Court

concession extended to the accused/narcotic dealer, probably in lieu of monetary gain, but till date no punitive action has been taken against the delinquent official(s) by the competent authority of the concerned departments, which is highly deplorable and speaks about their irresponsibility. As per statement of the worthy Advocate General made at the bar, an inquiry in the matter is in progress, but on one hand, the said inquiry has been initiated when the negligence was pinpointed by this Court, while on the other hand, not a single official either from the Police Department or from the FSL has been suspended till date what to speak of their dismissal. If such purpose and intentional negligence/acts are not dealt with an iron hand, the traffickers of the narcotics would easily succeed in their acquittal and the menace of narcotics will shatter the entire fabric of society. This is not the first time, rather, on different occasions this Court has informed High-ups of the Police Department with regard to the poor and deplorable conduct of the Seizing and Investigating Officers in narcotic cases, but at that end yet no heed has been paid. In this case, it is expected that the officials involved in the case shall be taken to the task by settling an example in the Police Department.

10. Copy of this order along with copy of FSL report be sent to the worthy Inspector General Police

Khyber Pakhtunkhwa, Peshawar, for taking necessary action under the relevant law as well as the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, against the delinquents under intimation to this Court through the Additional Registrar (Judicial).

11. Needless to mention that this order is only for disposal of the instant bail application which shall not prejudice the mind of the learned trial Court during trial.

Announced:
16.12.2019

Siraj Afridi P.S.


JUDGE

SB of Mr. Justice Rooh-ul-Amin Khan.