

**Judgment Sheet**  
**IN PESHAWAR HIGH COURT, PESHAWAR**  
*(Judicial Department)*

**Cr.MB. No.2324-P/2022.**

Ningyali  
Vs.  
The State.

**JUDGMENT**

For Petitioner: Mr. Khizar Hayat Khazana, Advocate.

For State: Mr. Bashar Naveed, Asstt: A.G.

Date of hearing: **04.8.2022.**

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**MUHAMMAD FAHEEM WALI, J.-** The petitioner through the instant petition seeks his release on bail in case FIR No.776 dated 16.7.2022, under Sections 5 of Explosive Substances Act, 1908 (VI of 1908), registered at police station Faqir Abad, Peshawar, as he has been declined relief of bail by the Court of learned Additional Sessions Judge-XI, Peshawar, vide order dated 21.7.2022.

2. The prosecution story as disclosed in the First Information Report (F.I.R), registered on the basis of murasila, in brief, is that on 16.7.2022 at 21:00 hours, Inspector Ijaz Khan SHO of police station Faqir Abad received a spy information during patrol duty that grenades were lying in shoe factory of the accused/petitioner situated at Saidy Road near Toray Kababi, whereupon he alongwith other police *Nafri*



rushed to the spot, where he found the petitioner in front of his office. On checking the office, two hand-grenades in a shopper were recovered therefrom, which were secured by taking out safety pin and were sealed in a parcel. Accused was arrested. Hence, the FIR.

3. Learned counsel for the petitioner argued that the alleged recovery has not been effected from personal possession of the accused/petitioner. He further submitted that according to clause a(iv) of Section 3 of the Khyber Pakhtunkhwa Arms, 2013, the alleged recovery comes within the purview of unlicensed ammunition which is punishable under Section 15(e) of the ibid Act to seven years imprisonment or fine or with both. He further argued that punishment for the offence under section 5 of the Explosive Substances Act, 1908, is fourteen years, however, under section 8 of the ibid Act, the prosecution is duty bound to receive sanction from the Government. The learned counsel concluded that in view of Section 71 PPC, if the offence falls within two different statutes, in that eventuality, lesser punishment would be considered. He prayed for release of the petitioner on bail.

On the contrary, the learned Asstt. A.G. vehemently argued that the recovery has been effected

from rented office of the petitioner and material available on file fully connects him with the commission of offence falling within prohibitory clause of Section 497, Cr.P.C., therefore, he is not entitled to the concession of bail.

4. Arguments heard and record scanned.

5. Before proceeding further, it would be appropriate to resolve the controversy as to whether Section 5 of the Explosive Substances Act is applicable keeping in view the attending circumstances of the present case and as to whether the offence would be covered by clause (a)(iv) of Section 3 of the Khyber Pakhtunkhwa Arms Act, 2013. The relevant sections of law are reproduced below for ready reference:-

***“Section 15(e), has in his possession or under his control any arms or ammunition in contravention of the provisions of section 9.”***

The definition of ammunition as provided in clause (a)(iv) of Section 3 of the Khyber Pakhtunkhwa Arms Act, 2013, includes all types of grenades. It reads as under:-

***“(a)(iv): all types of grenades, bombs, rockets, mines and fuels for flame throwers.”***

Section 5 of the Khyber Pakhtunkhwa Explosive Substances Act, 2013, the Act that repealed the

erstwhile Explosive Substances Act, 1908, is reproduced for convenience, which reads as follows:-

**“5. Punishment for making or possessing explosives under suspicious circumstances.**

“Any person who makes or knowingly has in his possession or under his control any explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be punishable with imprisonment for a term which may extend to fourteen years”.

It would not be out of place rather more convenient to discuss the provision of Section 71 PPC, which reads as under:-

***“71. Limit of punishment of offence made up of several offences:***

***Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided;***

***Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or***

***Where several acts, of which one of more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence;***

***The offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences.”***

6. Conjoint reading of the above sections of law would reveal that Section 15(e) of the Khyber Pakhtunkhwa Arms Act, 2013 is only applicable to a case where possession or control of any arms or ammunition is made in contravention of the provision of Section-9, which puts an embargo of having possession or control of arms without getting a proper licence. Similarly, clause a(iv) of subsection (3) of the ibid Act defines ammunition to include grenades and other things and the punishment for an offence has been provided under section 15, wherein if an accused person is found in possession of a grenade then he shall be punished with imprisonment which may extend to seven years or fine which may extend to Rs.2,00,000/- or with both. Taking the above-stated narration in juxtaposition with Section-5 of the Khyber Pakhtunkhwa Explosive Substances Act, 2013, the punishment so provided by this section is imprisonment for a term which may extend to fourteen years. The cross-road thereof, for applicability of two Statutes, enforced in the field, that carries different punishments for the similarly defined offence, has been dealt with by section-71 of the Pakistan Penal Code, which provides that if an offence is falling within two or separate definitions of any law enforced for the time being by which offences are defined or punished, then, the offender shall not



be punished with more severe punishment rather he would be dealt with under the Statute that provides lesser punishment. Thus, by using the term "shall" it has been made abundantly clear that the provision is mandatory and not directory in nature.

7. Now applying the above yardstick to the facts and circumstances of the case, and keeping in mind the provisions of Section 71 PPC, there is possibility that the petitioner, even if found guilty of the offence, would be extended benefit of section 71 PPC and at the most he could be charged under section 15 of the Khyber Pakhtunkhwa Arms Act, in view of explicit provisions contained in Section 71 PPC, and the maximum punishment provided under section 15 of the Khyber Pakhtunkhwa Arms Act, 2013, is seven years or with fine or with both, which is not hit by the restrictive clause of section 497, Cr.P.C. Moreover, admittedly the alleged recovery of hand grenades was neither effected from personal possession of the petitioner nor at his pointation, rather the same was allegedly effected from his office. In such view of the matter, the petitioner is entitled to the concession of bail.



8. For what has been discussed above, this petition for post arrest bail is allowed and the accused/petitioner is directed to be released on bail subject to furnishing bail bond in the sum of

Rs:100,000/- (one lac) with two sureties, each in the like amount, to the satisfaction of learned Illaqa/Duty Judicial Magistrate.

9. Above are the detailed reasons of my short order of even date.

Announced.  
Dt: 04.8.2022.  
[Kifayat/PS\*]



JUDGE

(S.B)  
Hon'ble Mr. Justice Muhammad Fahcem Wali

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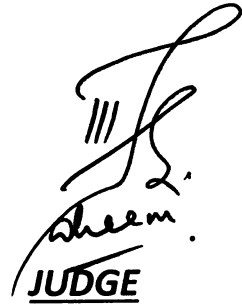
For State: Mr. Bashar Naveed, Asstt: A.G.

Date of hearing: 04.8.2022.

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**MUHAMMAD FAHEEM WALI, J.-** For reasons to be recorded later, this petition for post arrest bail is allowed and the accused/petitioner Ningyaly son of Said Rahim is admitted to bail subject to furnishing bail bonds in the sum of Rs:100,000/- with two sureties, each in the like amount, to the satisfaction of learned Illaqa/Duty Judicial Magistrate.

Announced.  
Dt: 04.8.2022.  
Kifayat/ PS\*

  
**JUDGE**

(S.B)  
Hon'ble Mr. Justice Muhammad Faheem Wali