

PESHAWAR HIGH COURT ABBOTTABAD
BENCH

JUDICIAL DEPARTMENT

JUDGMENT SHEET

Cr. M.No.368-A/2018

Date of hearing 08.05.2018.

Petitioner/s (Zahid Sultan) by Mr. Masood ur Rehman Tanoli, Advocate.

Respondent/s (The State & another) by Sardar Muhammad Asif, Assist: AG.

SYED MUHAMMAD ATTIQUE SHAH, J.

Petitioner *Zahid Sultan* has applied to this Court for his release on bail in case FIR No. 433 dated 20.04.2018 under section 9 (c) of the Control of Narcotic Substances Act, 1997, 15 KPK Arms Act, 2013 registered against him at Police Station Havelian, Abbottabad, wherein he is charged for possessing 3437 grams *charas* alongwith 30 bore pistol.

2. Arguments heard and record available gone through.

3. A cursory glance on record of the case would reveal that no doubt 3437 grams *charas* alongwith 30 bore pistol were shown to have been recovered but admittedly the recovery was not effected from personal possession of the accused/petitioner rather it was shown to have been recovered from the

alleged residential room of the house of the accused/petitioner. There was prior information regarding selling of narcotics by the present accused/petitioner and local police obtained search warrant from Magistrate regarding the search of house of present accused/petitioner, whereby the learned Magistrate directed the local police to search the place/house in presence of elders of locality but no private and independent person was associated with the alleged recovery. Furthermore, the above search warrant was issued by concerned Magistrate on 18.04.2018 under Article 22 of the Prohibition Order (Enforcement of Hadd) Order, 1979 and it was specifically mentioned therein that the search warrant would be effective for twenty four hours. Since raid was conducted on 20.04.2018, the search warrant issued by the Magistrate ceased to have any effect after lapse of twenty four hours, therefore, its evidentiary value would be determined by the learned trial Court after recording evidence of the prosecution. Moreover, the Judicial Magistrate was not competent to issue search warrant in the cases to be registered under the provisions of Narcotic Substances Act, 1997, rather it was Special Court, who could issue such warrant under the provisions

of CNSA, 1997. This Court in case titled 'Rehmat Zaman and another Vs. The State' (2008 MLD 1589), has held that

"Perusal of the record reveal that the search warrant, dated 22.3.2008 in this case was issued by the Judicial Magistrate. Under the law search has to be conducted strictly in accordance with section 20 of the Control of Narcotic Substances Act, 1997 and it is the Special Court who has to issue the search warrant to any violation of this provision of law will make the search illegal."

In another case titled 'Abrar Hussain Vs. The State' (2011 YLR 238), it was held that:-

"Section 20 of Control of Narcotic Substances Act, 1997 connotes that Special Court, alone, can issue warrant for the search of any building, place, premises or conveyance in which it has reason to believe that contraband mentioned in the section is kept or concealed. Subsection (i) of the said section is thus restricted and deals primarily with apprehension of offender which would, obviously, be followed by his culpability, on the one hand and provisions for raid, search, on the other, but the Magistrates muchless Judicial Magistrates have not been invested with such powers. The said jurisdictional error cannot be ignored. It is now well established that before such an action is justified, the existence or otherwise of the power is to be ascertained so as to perform it within permissible limits failing which the very action together with super-structures built thereon would crumble."

4. Likewise, on record there is no previous conviction of accused/petitioner regarding his involvement in such like cases and finally the investigation in the case is also complete and accused/petitioner is no more required to the local police for further investigation. Moreover, the report of FSL is also not available on file, without which it cannot be determined that the recovered stuff was actually charas or something else. It is pertinent to mention here that on the same day, time and from the same house, local police of police station Havelian also recovered 2232 grams *charas* and case FIR No. 434 dated: 20.04.2018 was also registered against brother of present accused/petitioner.

5. In view of the above and on tentative assessment of the available record, this Court is of the view that the petitioner has made out a case arguable for the purpose of bail as his case falls within the ambit of further inquiry *qua* his guilt.

6. Consequently, this bail petition is allowed and it is directed that the accused-petitioner be released on bail, subject to his furnishing bail bonds in the sum of Rs.1,00,000/- with two sureties each in the like amount to the satisfaction of the learned Illaqa /

Duty Judicial Magistrate, who shall ensure that the sureties are local, reliable and men of means.

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

Announced.

08.05.2018.

Tahir PS


J U D G E