

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.

Cr.M.A.No. 2775/P /2017.



Momin Shah S/O Sarwar Shah resident of Bekar Killi
Rustam, Tehsil and District Mardan.... Accd/petitioner.

Versus

The State... .. Respondent.

FIR No.769 dated 01/12/2017
U/S 9C CNSA/15 AA Police
Station Rustam.

APPLICATION U/S 497 Cr.P.C.FOR THE
RELEASE OF THE PETITIONER, ON BAIL
TILL THE FINAL DECISION OF THE CASE.

RESPECTFULLY SHEWETH:

1. That the petitioner has been arrested in the above noted case, and is in judicial lock up at Central Jail, Mardan.
(Copy of FIR alongwith its better copy are Annexures-"A" & "A/1" respectively).
2. That the petitioner submitted bail petition in the Court of learned Additional Sessions Judge, Mardan, which was rejected.
(Copies of bail petition and that of the impugned order are attached as Annexures "B" & "B/1" respectively).
3. That the petitioner being aggrieved from the order of the learned lower Court, approach

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*Judgment Sheet***IN THE PESHAWAR HIGH COURT, PESHAWAR**
JUDICIAL DEPARTMENT**J U D G M E N T**

Cr.M.B.A No. 2775-P/2017
Date of hearing.....02.01.2018

Momin Shah..... Vs.....The State.

Petitioner (s) by Mr. Muhammad Salim Khan, Advocate

Respondent(s) by Syed Qaiser Ali Shah, AAG for the State.

MOHAMMAD IBRAHIM KHAN, J:- Momin Khan, the petitioner herein is enmeshed in case FIR No.769 dated 1.12.2017 u/s 9-C CNSA/ 15 AA, Police Station, Rustam, Mardan, and thereby is optimistic for the grant of post arrest bail.

2. The petitioner earlier petition bearing No.316/BA of 04.12.2017 vide order dated 06.12.2017 was dismissed by the court of learned Additional Sessions Judge-VIII, Mardan. The reasons for dismissal are that the petitioner is directly charged in the FIR, there is recovery of huge quantity of narcotic from his possession, the petitioner being charged for the offence is covered by Prohibitory clause of section 497 Cr.P.C. and whereas the provision of section 103 Cr.P.C. has not been complied with cannot be taken at this stage of bail as it would require deep appreciation of the evidence.

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15 FEB 2018

3. The complainant of this case Asif Ali SI was performing his duty alongwith other police officials on mobile gusht when reached the place near Bher Wough Road Near Kalu Dheri Pull a passerby wanted to whisk of from the side of the police officials who was chased and from his possession when apprehended a shopping bag from his right hand was recovered which contained 2 packets chars pukhta. On further search of body of the said person pistol 30 bore bearing No.A1970 alongwith 2 spare charges contained 10 live rounds was also recovered. The said person was taken into custody who disclosed his name as Momin Khan. Out of the recovered stuff of contraband chars, 5/5 grams were sent to Forensic Science Laboratory for chemical analysis while the remaining 2020 grams were sealed into another parcel.

4. Having heard the learned counsel for the petitioner and the learned AAG for the State, record with their assistance gone through.

5. It is indeed a fact that cannot be denied that the recovered pistol with live rounds of 30 bore is validated by arm license issued by the competent authority under arms license No.374-IH4 dated 30.6.2014. It is sanctioned vide office of the Deputy Commissioner, Mardan in the name of the present petitioner, whereas, the recovery of the contraband charas is still shrouded in mystery as after its recovery on 01.12.2017 the same was dispatched to the Laboratory on 05.12.2017, whereas the application dated 01.12.2017 from the office of S.P. Investigation is utterly silent that to whom this contraband charas for the chemical analysis was entrusted to. This application does not show

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whereas the FSL does not name and such constable but there is written HC No.310 obviously challan also does not pin point the name of such witness in the calendar of witnesses.

6. It has been held in 2012 SCMR 573 titled Jamaluddin alias Zubair Khan Vs. The State that where there is a recovery of chars even if an accused is involved in many other cases but has never been convicted, bail cannot be refused when even charas weighing 4 kilograms. The petitioner has no criminal history of his involvement before this occurrence. There are reasons to believe that if a police constable who had not been named in the application for sending the required stuff for chemical analysis through the police officials who has not been cited in the calendar of witnesses the recovery will leave a room for further scope.

7. The petitioner is entitled to the concession of bail. Hence he is asked to furnish bail bonds in the sum of Rs.200,000/- (rupees two lacs) with two sureties each in the like amount to the satisfaction of learned Illaqa/Duty Judicial Magistrate concerned who shall ensure that the sureties are local, reliable and men of means.

These are the reasons of my short order of even date.

Announced.
2.1.2018

— (الحق) —
JUDGE

Shahid Ali

(S.B) Hon'ble Mr. Justice Mohammad Ibrahim Khan

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Examiner
Peshawar High Court, Peshawar
Authorised Under Article 87 of
The Qanun-e-Shahadat Order 1984

15 FEB 2018

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