

Judgment Sheet

**IN THE PESHAWAR HIGH COURT,
PESHAWAR**
(Judicial Department)

Cr.MBA No. 1118-P/2020.

Taufiq Said Vs The State.

JUDGMENT

Date of hearing. 07.05.2020.
Petitioner(s) by: Mr. Abdul Rashid Pirzada Advocate.
State by: Ms. Sophia Noreen Advocate.

IKRAMULLAH KHAN, J:- Through the instant bail petition, petitioner Taufeeq Said seeks his release on bail in case FIR No. 971 dated 25.12.2019, registered under Section 9-D KP CNSA 2019, at Police Station Choora, Mardan, wherein he is charged for possessing three packets of Charas total weighing 3330 grams, which was recovered by local police from his possession.

2. I have heard learned counsel for petitioner, learned AAG for the State and gone through the available record.

3. Perusal of record reveals that petitioner was arrested red handed on the spot while having a plastic bag in

his hand, which on search led to the recovery of 3330 grams Charas. The prosecution case is duly corroborated by the marginal witnesses present on the spot coupled with the positive report of FSL, according to which the contraband recovered from possession of petitioner was Charas, which prima facie link the petitioner with the commission of offence.

4. The main plea of learned counsel for petitioner is that at the time of registration of present FIR i.e, 25.12.2019, the local police was not authorized to search, seize or arrest a person under Section 28 of the Khyber Pakhtunkhwa Control of Narcotics Substances Act 2019 rather the powers were vested in the "Authorized Officer" which has been defined in Section 2(e) of the Act as under:-

"Authorized Officer" means,

- i. *An officer of the Directorate General and below the rank of Sub Inspector, authorized by the Director, or*
- ii. *A Police Officer/official not below the rank of Sub Inspector, authorized by the Regional Police Officer."*

5. No doubt at the time of registration of the instant case the local police was not empowered with the search, seizure and arrest under Section 28 of the Act *ibid*, but later on 31st January 2020, after promulgation of Khyber

Pakhtunkhwa Control of Narcotics Substances (Amendment) Ordinance, 2020, a new sub-section 3 was added after sub-section 2 of Section 59, whereby it was provided that:

“(3)all the actions taken, proceedings commenced and things done by the Department or Police from 4th September 2019 till the commencement of the Khyber Pakhtunkhwa Control of Narcotics Substances (Amendment) Ordinance 2020, shall be deemed to have been validly taken, commenced and done under this Act.”

6. Keeping in view the above provision of law, it is clear that all the action done and proceedings conducted by local police from 4th September 2019 till 31st January 2020 have been given protection however the instant case has been registered on 25.12.2019, which also comes during the above period of 4th September 2019 to 31st January 2020, so the petitioner cannot take benefit of Section 28 of KP CNSA 2019 at this stage, as all the actions done during above period by local police has been declared legal under the newly amended Ordinance 2020. Learned counsel for petitioner has relied upon the judgment of this Court rendered in Writ Petition No.7254-P/2019, decided on 17.1.2020, where it was held that the local police had no jurisdiction under Section 28 of the KP CNSA 2019 and allowed bail to the petitioner of that case. Admittedly, at the time of disposal of the above writ

petition on 17.1.2020, the Khyber Pakhtunkhwa Control of Narcotics Substances (Amendment) Ordinance, 2020, was not in field which was later on promulgated therefore, the petitioner of that petition was rightly allowed bail by this Court at that time, however, now the newly promulgated Act is in field whereby protection has been given to the action and proceedings of local police, therefore, petitioner cannot take benefit of the referred judgment of this Court at this stage.

7. Apart from above, petitioner has also been charged in other criminal cases of same nature, the copies of those FIRs are available on file, which depicts that petitioner is habitual offender and dealing in narcotics business. The prosecution has collected sufficient material against petitioner, which prima facie connects him with the commission of a heinous offence falling under the prohibitory clause of Section 497 Cr.PC, therefore he is not entitled to the concession of bail. Hence this bail petition being devoid of merit is dismissed. However, the prosecution/ SHO concerned is directed to submit complete challan against the petitioner before the learned trial Court within a fortnight

positively and thereafter the learned trial Court is expected to conclude the trial expeditiously.

Announced:
07.05.2020.


JUDGE