

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH
(Judicial Department)

Cr.Misc:BA No.590-B/2023

Syed Khan alias Malangi

Versus.

The State

JUDGMENT

Date of hearing: 17.11.2023

For petitioner: Mr. Younas Ali Shah Advocate.

For State: Mr. Umer Qayyum Khan, A.A.G.

Dr. Khurshid Iqbal, J.-

1. The petitioner, Syed Khan alias Malangi, seeks release on bail in case FIR No.974, dated 24.10.2023, registered under section 11(b) of the Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019, at Police Station Cantt, District Bannu.

2. On 24.10.2023, a police patrol led by Rauf Khan, PASI, received information that a notorious drug peddler, known as Syed Khan alias Malangi, was awaiting clients for the sale of ice on the metalled road of Amandi Amir Jan, near River Kurram. Acting on the information, the police patrol immediately rushed to the spot and spotted a person matching the informant's description. On seeing the police patrol, the person attempted to flee, but was apprehended. His physical search revealed a polythene bag containing 527 grams of ice in his side pocket. The ice was seized through a recovery memo, dated 24.10.2023. The person disclosed his identity as Syed Khan alias Malangi, son of Mira Khan from Bazid Tughal Khel, District Bannu. He was arrested. A murasila of the incident report was



drafted and forwarded to the police station for case registration. Hence, the FIR.

3. Arguments heard. Record perused.

4. The record reveals that 527 grams of ice was recovered from the direct possession of the petitioner. It is a huge quantity. A sample of one gram was extracted from it and sent to the FSL for chemical analysis. The FSL report was received in positive, confirming the nature of the substance as ice. It is imperative to acknowledge that the escalating menace of ice, both in its sale and usage, is a pressing concern that intensifies day by day. Viewing this issue from a broader perspective, the widespread prevalence of ice as a narcotic substance poses a grave threat to the society, carrying the potential to precipitate its eventual collapse and imperil the future of the youth. If left unchecked, the pervasive consequences of this menace can undermine the stability, progress, and prosperity of the nation as a whole. The Legislature, recognizing the urgency of the situation, has proactively brought about legislative strictness within the province through the enactment of the 2019 CNS Act. The legislative framework on the subject underscores the gravity of the menace. It is, therefore, high time to combat this issue with a robust judicial response in confluence with the legislative efforts.

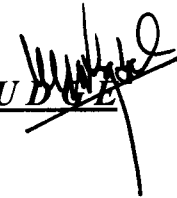
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5. Though, the learned counsel has strongly advocated for bail given that the sample parcel was dispatched to the FSL beyond 72 hours. According to him, it is the violation of Rule-4(2) of the Control of Narcotic Substances (Government Analysts) Rules, 2001. To support his contention, a precedent of this Court in Cr.Misc.BA No.04-B/2022, dated 10.01.2022, was cited. However, it has been superseded by the Supreme Court's judgment in Gull Din v. The State through P.G. Punjab and another



(2023 SCMR 306), establishing that Rule-4(2) being directory in nature, its non-compliance would not be a sufficient ground for bail. The latest Supreme Court judgment, binding on this Court by virtue of Article 189 of the Constitution, mandates adherence, and in adherence thereto, the contention is repelled.

6. A tentative reading of the record prima facie connects the petitioner to the offence alleged against him. It entails punishment which is covered by the prohibition contemplated in section 497 Cr.P.C. Given these facts and circumstances, the petitioner does not merit bail. Consequently, the application is refused.

Announced
Dt: 17.11.2023
(Ghafoor Zaman)


JUDGE

(S.B) Hon'ble Mr. Justice Dr. Khurshid Iqbal



18 NOV 2023
