

IN THE PESHAWAR HIGH COURT,
PESHAWAR,
[Judicial Department].

Cr.Misc.BA No.3793-P/2020

Muhammad Hanif son of Muhammad Nawaz,
r/o Bara Qamber Khel.

Petitioner (s)

VERSUS

The State

Respondent (s)

For Petitioner (s) :-	<u>Ms. Zohra Durrani, Advocate</u>
For State :-	<u>Mr. Arshad Ahmed AAG.</u>
Date of hearing:	<u>25.01.2021</u>

ORDER

ROOH-UL-AMIN KHAN, J:-Petitioner Muhammad Hanif, seeks post arrest bail in case FIR No.548 dated 28.11.2020, registered under section 9 (d) Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019, at Police Station Jalojai, District Nowshera.

2. According to First Information Report (FIR), on receipt of spy information qua presence of the petitioner along with narcotics and waiting for his customers at “*Dak Ismaeel Khwar*”, Asif Momen Khan SHO along with other police officials on 28.11.2020 at 1550 hours reached the spot and apprehended the petitioner along with a red polythene bag in his hand, search of which led to the recovery of 05 packets of chars, each having different weight, total of which came to 5347 grams. The SHO/Seizing Officer separated 05 grams from each packet

as samples for chemical analysis by the FSL, hence, this case.

3. Arguments of learned counsel for the parties heard and record perused.

4. As per prosecution version, the petitioner along with narcotics was present in “Dak Ismaeel Khwar” waiting for his customers, but neither any test purchase has been conducted nor any instruments such as scale, papers, stapler and narcotic in sachets, usually used by the drugs sellers for selling narcotics in small quantity to the customers, have been shown recovered from the petitioner what to say of recovery of any amount of sale proceeds. The place of occurrence as shown in the site plan is a straight ravine (Algadda) leading from East to the West and vice versa, and visibility of the police seems quite possible from a long distance. Similarly, towards the North and the South of the place of occurrence there are hills. It is not the case of the prosecution that the petitioner on noticing the police tried to escape. The petitioner having more than 05 Kgs chars despite having opportunity to makes his escape good in the nearby hills or at least throw away the narcotics, would still dare to proceeds towards the police offer his arrest, is a crucial aspect of the case which pinches a prudent mind about the authenticity of the prosecution story, which is yet to be proved during trial, however, at the moment it makes the case of the petitioner

arguable for the purpose of bail. Besides, the alleged recovered contraband narcotics, as required under the mandatory provision of section 33 KP CNS Act, 2019, have not been produced before the learned Special Court/Illaqa Judicial Magistrate at the time of production of the petitioner for physical remand. FSL report qua the samples is not available on file, therefore, it is still uncertain as to whether the recovered material was narcotics or something else which further makes the case of the petitioner arguable for the purpose of bail. Investigation is complete and petitioner is no more required for further interrogation. Record is also silent about previous involvement of the petitioner in such like offences.

5. For the reasons stated above, this petition is accepted. Accused/petitioner is allowed bail. He shall be released on bail provided he furnishes bail bonds in the sum of rupees two lacs with two local, reliable and resourceful sureties each in the like amount to the satisfaction of learned Illaqa Judicial Magistrate/MOD concerned.

Announced:

25.01.2021

M.Siraj Afridi PS

SENIOR PUISNE JUDGE

