

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT PESHAWAR
JUDICIAL DEPARTMENT

Cr.Misc./BA. No. 2218-P/2017.

Zaib Khan vs. State

JUDGMENT

Date of hearing: 20.10.2017.

Petitioner: (Zaib Khan) by Mr. Yousaf Ali, advocate.

State by Mr.Moinuddin Humayun, AAG.

SHAKEEL AHMAD, J. - Through the instant criminal Misc.application, the accused/petitioner Zaib Khan s/o Farooq Khan seeks post arrest in crime report No.591 dated 14.9.2017, registered under section 9(c) of the Control of Narcotic Substances Act, 1997 of Police Station, Rustam District Mardan.

2. The prosecution case as set forth in the crime report are that on 14.9.2017, complainant Dilawar Khan SI reported that during search and strike operation (headed by DSP Rural) he was present in the locality, he received information that the petitioner is busy in selling of narcotics. He alongwith other police officials went to the spot, overpowered the accused and recovered 3020 grams charas from his immediate possession. Five grams sample was separated from the total lot for chemical examination. The accused/petitioner was arrested on the spot. Vide order dated

25.9.2017, the petitioner was declined bail by the learned Additional Sessions Judge-II, Mardan, hence this petition.

3. The learned counsel for the petitioner argued that on the face of it, the prosecution case is false and concocted one. He next argued that nothing incriminating article was recovered from possession of the accused/petitioner. He further argued that the recovery was shown from a public place, but, no private witness was associated to attest the recovery of contraband. He further elaborated that while deciding the bail application under the Control of Narcotic Substances Act, 1997, the nature and quality of contraband and ultimate punishment which is likely to be imposed is to be kept in mind. He lastly argued that investigation in the instant case is complete and the petitioner is no more required for the purpose of investigation, therefore, he is entitled to be released on bail. In support of his contention, he placed reliance on 2012 SCMR-573, 2016 P.Cr.L.J-730 and 2017 MLD 288.

4. As against that the learned AAG representing the State argued that the petitioner was caught red handed and charas weighing 3020 grams were recovered from his personal possession. The FSL report reveals that the recovered item was charas. He lastly argued that the offence with which the petitioner is charged falls within the prohibition contained in section 497 Cr.P.C, therefore, the petitioner is not entitled for bail.

5. I have heard arguments of the learned counsel for the petitioner and AAG representing the State and perused the record with their able assistance.

6. The maximum sentences provided by the Control of Narcotic Substances Act, 1997 for different quantities of the recovered contraband Narcotic Substances are as under:-

Section 9 (a): (if the recovered quantity is 100 grams or less) Imprisonment upto 2 years or fine or both.

Section 9 (b): (if the recovered quantity exceeds 100 grams but does not exceed 1 kilogram) Imprisonment upto 7 years and fine.

Section 9 (c): (if the recovered quantity exceeds 1 kilogram).

Death or imprisonment for life or imprisonment upto 14 years and fine upto one million Rupees.

If the recovered quantity exceeds 10 kilograms then the sentence is not to be less than imprisonment for life.

7. A plain reading of class (a), (b) and (c) of section 9 of the CNS Act, 1997 reveals that the sentences provided by for the Control of Narcotic Substances Act, 1997 are prescribed with reference to quantity of the recovered contraband Narcotic Substances and not with reference to the kind or nature of the recovered contraband narcotic substance.

8. Perusal of record reveals that charas weighing 3020 grams were recovered from personal possession of the petitioner and the FSL report was received in positive. The

case of the petitioner squarely falls in clause (c) of section 9 of Control of Narcotic Substances Act, 1997. The maximum sentence provided by section 9(c) of Control of Narcotic Substances Act, 1997 imprisonment which may extend to 14 years and fine upto one million rupees.

9. Section 51 of Control of Narcotic Substances Act, 1997 deals with restriction for grant of bail in respect of certain offences, it is divided into two parts, under part one, accused whether male or female is not entitled to be released on bail, if he or she is involved in an offence punishable with death, provision of section 496 and 497 Cr.P.C has specifically been excluded under this part, under second part accused male or female involved in an offence which is punishable less than death, is not normally required to be released on bail unless the court is of opinion that it is a fit case for grant of bail subject to condition of furnishing security of substantial amount under this part application of section 496 & 497 Cr.P.C. have not been excluded.

10. Coming to the contention of the learned counsel for the petitioner that no witness from public was associated though the alleged recovery was effected from public place. The contention of the learned counsel for the petitioner is based on misconception. Section 25 of the Control of Narcotic Substances Act, 1997 has excluded applicability of section 103 Cr.P.C. In this respect, reliance can be placed on PLD 2009 Quetta-5 and 2005 P.Cr.L.J 1558.

11. The case law cited by the learned counsel for the petitioner are out of context. Categorization of sentence or any guess work or speculative exercise is prohibited at bail stage in such crimes. In this respect, reference can well be made on the case "Socha Gul vs. The State (2015 SCMR-1077), wherein it was held as under:-

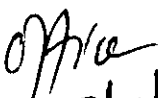
"Neither categorization of sentencing nor any guess work or speculative exercise could be undertaken by court at bail stage to enlarge an accused on bail in such crimes---Such categorization amounts to pre-empting the mind of Trial Court, controlling its powers in the matter of sentencing accused and determining quantum of sentence upon his conviction."

12. The investigation in the instant case is complete and trial is likely to commence. The tentative assessment of evidence available on record leads me to the conclusion that prima facie the accused/petitioner is connected with the alleged crime and it is not a fit case for grant of bail.

13. For the foregoing reasons, the petitioner is not entitled to the concession of bail. The petition in hand being devoid of force is **dismissed**.


JUDGE

Announced.
Dated: 20.10.2017.


23/12/17