

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

***BA No. 517-P of 2018***

**ORDER**

**Niaz Wali**

**Verses**

**The State**

Date of hearing. **30.03.2018**

Petitioner by; Mr. Shah Faisal Utman Khel, advocate.

State by: Mr. Mujahid Ali Khan, AAG.

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**QAISER RASHID KHAN, J.** The accused/petitioner Niaz Ali, seeks bail in case FIR No. 42 dated 19.01.2018, under section 9 (c), CNSA, registered at police station East Cantt, Peshawar , with the allegations of having been found in possession of 4 Kgs charas.

2. All that the learned counsel for the petitioner urges is that neither any recovery of the contraband charas was made from the possession of the petitioner nor his presence is established at the spot as at that point of time he was present at Karkhano Market. He further contends that the registration number of the Mazda vehicle from which he was allegedly boarded has not been mentioned in the FIR and more over, there are obvious contradictions in the contents of the FIR where ‘charas garda’ is alleged to have been recovered from his possession while in the FSL report the recovered item has

been shown as 'brown solid'. He further submits that in a situation where the personnel of the Excise Narcotics Squad were present on the spot and the petitioner still kept the bag in his hand wherefrom the recovery has been effected does not appeal to a prudent mind and the circumstances lead the case of the petitioner to one of further inquiry entitling him to the concession of bail. He lastly submitted that an application has been submitted to the concerned authority for holding a fair and impartial inquiry into the matter.

The learned AAG on his turn resisted the submissions of the learned counsel for the petitioners and contends that huge quantity of charas has been recovered from the immediate possession of the accused/petitioner.

3. Arguments heard and the available record perused.

4. In a situation where there was prior information regarding the smuggling of narcotics by a passenger to Punjab and where the accused-petitioner was debarked by Excise Narcotics Squad from the vehicle on the pointation of the spy carrying a bag wherefrom 4 Kgs charas were recovered, then his prima facie linkage with the commission of the offence cannot be ruled out at the moment which squarely falls within the ambit of prohibitory clause section 497 (1) Cr.P.C.

5. So far as the argument of the learned counsel for the petitioner regarding mentioning of *charas*

*garda* in the FIR and ‘brown solid’ in the FSL report is concerned, such aspect has been dealt with elaborately in a judgment of this court dated 30.09.2015 in Cr.A No. 466-P of 2014. Lately, an impression has been imparted regarding the charas *garda* to be in particle or granular form which, I am afraid, is indeed not the case. For all practical purposes, charas *garda* means the charas in a raw form and after undergoing some baking process it turns into charas *pukhta*. The colour of both charas *garda* and charas *pukhta* is brown, brownish/ dark brown depending upon the visual evaluation and of course description by an individual. In this case too, the contraband charas has been mentioned as brown solid in the FSL report which is in the affirmative.

6. Accordingly, the petitioner is held disentitled to the concession of bail and the bail petition stands dismissed.

7. Needless to mention that the observations recorded in this order are tentative in nature and shall not prejudice the proceedings before the learned trial court where the case be decided on its own merits after recording evidence.

Announced  
30.03.2018.

J U D G E

“younas”

Justice Qaiser Rashid Khan (SB)