

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

Present:

**Justice Muhammad Hashim Khan Kakar**

**Justice Aamer Farooq**

**Justice Ali Baqar Najafi**

**Crl. PLA Nos.537-2025 & 559-2025**

(Against the order dated 28.04.2025 passed by  
Lahore High Court, Rawalpindi Bench, Rawalpindi  
in Crl.Misc. No.1865-B-2025 and Crl.Misc.No.1864-B-2025)

Muhammad Daud  
Amanullah

Crl. PLA No.537-2025  
Crl. PLA No.559-2025  
.... Petitioner(s)

**VERSUS**

The State and another

.... Respondents  
(in both petitions)

For the Petitioner(s):

Mr. Muhammad Akbar Shah, ASC  
(in both cases)

For the Respondent(s):

Ch. Ehtasham ul Haq, P.G. ANF  
(in both cases)

Date of Hearing:

19.06.2025

**JUDGMENT**

**AAMER FAROOQ, J.-** The petitioners namely Muhammad Daud s/o Abdul Aziz (petitioner in Crl.PLA No.537-2025) and Amanullah s/o Akhtar Muhammad (petitioner in Crl.PLA No.559-2025) seek leave to appeal against the decision of Lahore High Court, Rawalpindi Bench, Rawalpindi dated 28.04.2025 in Crl. Misc. No.1856-B-2025 & Crl. Misc. No.1864-B-2025, whereby their applications for bail after arrest in case FIR No.03 dated 18.03.2025 under sections 9(2)8, 15 of the Control of Narcotics Act, 1997 registered with Police Station ANF, Mianwali, were dismissed.

**2.** The petitioners are implicated in the aforementioned case and the allegations against them are that on spy information, they were apprehended along with co-accused and from their possession, Methamphetamine (Ice) weighing 1000-grams each was recovered totaling to 3.2 kilo grams.

**3.** Learned counsel for the petitioners *inter alia* contended that since the narcotic substance recovered from each petitioner is approximately 1000-

grams, hence the case would not fall within prohibitory clause and they are entitled to concession of bail on the principles laid down in case reported as Tariq Bashir and 5 others Vs. The State (PLD 1995 SC 34). It was contended that prosecution has made out a case of 3.2 kgs of the narcotic substance collectively against each accused/petitioner, which is uncalled for at this stage inasmuch, whether they had conscious knowledge of the possession of the narcotic substance by the fellow passenger/co-accused, is a question of fact, which can only be determined after recording of evidence. It was contended that the case, against the petitioners, is of further inquiry to the extent of collective recovery of the narcotic substance amounting to 3.2 kgs. In support of his contentions, learned counsel for the petitioners placed reliance on case reported as Atif Ur Rehman Vs. The State (2021 SCMR 324).

**4.** Learned Prosecutor General, ANF *inter alia* contended that recovery of 3.2 kgs of narcotic substance would be attributed to each accused separately. It was contended that this Court in case reported as The State through Director ANF Peshawar Vs. Rashmali Khan and others (PLD 2016 Supreme Court 471) has held that on the basis of conscious knowledge of the possession, each accused is responsible for the collective recovery and is to be punished accordingly.

**5.** Heard.

**6.** The petitioners are implicated in the afore-mentioned case for alleged possession and transportation of the narcotic substance which is Methamphetamine (Ice) totaling to 3.2 kgs.

**7.** The case of the petitioners is that psychotropic substance is Ice and as per the table provided in subsection (2) of Section 9 of the Control of Narcotic Substances Act, 1997 (the Act), if the quantity recovered is up to one kilogram, the imprisonment is up to seven years but is not less than five years along with fine, however, as per Sr. No.7 of the table, if the quantity is more than 2-kgs and up to 3-kgs, the punishment would be up to fourteen years but not less than ten years along with fine and, in case, the quantity recovered is more than 3-kgs and up to 4-kgs, the imprisonment is up to twenty years, but is not less than fourteen years along with fine of Rs.18,00,000/-. As per the fourth proviso to subsection (2) of Section 9 of the Act, if the quantity exceeds 4-kgs and the narcotic substance is Ice, the

accused has to be punished with life imprisonment and fine, which is not to be less than two and half million rupees.

**8.** The moot point, in the instant petitions, is whether at present, each petitioner is to be attributed one kilogram of the narcotic substance as recovered from each accused or he would also be responsible for the collective recovery of 3.2 kgs, as is the case of the prosecution on the basis that accused had conscious possession and knowledge of the narcotic substance possessed by the others. There is ample case law which reflect the approach of the courts with respect to the doctrine of 'conscious knowledge' in narcotic cases. Undoubtedly, the prosecution has to prove its case on the basis of the Latin maxim '*actus non facit reum nisi mens sit rea*' (an act does not make a person guilty unless the mind is also guilty). In this regard, the prosecution has to prove not only that the prohibited act was committed by the accused, but also, he had a requisite mental state *mens rea* for the commission of the offence. For the purposes of present case, the legal landscape surrounding narcotics laws often grapples with the intricate concept of 'possession' and the 'knowledge' thereof. The possession can be physical and conscious, but there can also be constructive possession, if the person/accused had the knowledge that the other person also is carrying narcotic substance and they all have common design, sale and transportation of the narcotic substance. The word 'possession' has been defined in Black's Law Dictionary, tenth Edition Page 1351, as 1. 'the fact having or holding property in one's power; the exercise of dominion over property' 2. 'the right under which one may exercise control over something to the exclusion of all others'. The word 'possession' was explained in judgment reported as Muhammad Siddique J Jalal ADA Vs. The State (PLJ 1985 FSC 50) as 'actual possession' and not 'constructive possession'. Under the Act, the 'knowledge' and 'conscious possession of narcotic' is critical in evidence appreciation, particularly when large quantities of narcotic are found in vehicles. Section 29 of the Act creates a presumption and addresses it in a manner that there is a presumption from possession of illicit articles that the accused has committed an offence, if found in possession of any narcotic drug or psychotropics i.e. the substance, however needless to observe that this section does not absolve the prosecution from proving its case beyond doubt and the burden shifts to the

accused only after the prosecution has established recovery beyond reasonable doubt. The determination of conscious possession is largely a factual matter, heavily relying on the specific circumstances of each case. The court has to analyze the evidence to ascertain accused's mental state regarding seized narcotics. The courts often infer conscious possession from circumstantial evidence rather than direct admission and all the surrounding factors are to be looked into which include or not restricted to; the manner of concealment, the quantity of drugs, the relationship of the accused to the place of recovery (owner, driver, passenger, etc.), the conduct of the accused, any financial transactions or communications linked to the drugs and/or prior history of the accused. It is emphasized that the burden of proof always remains with the prosecution to establish that narcotic drugs were recovered from the possession and control of the accused and when there is more than one accused that each had conscious knowledge of the possession. Only if and when the prosecution has discharged its initial burden of possession and conscious knowledge, when there is more than one accused. The accused can rebut this presumption by demonstrating that they lacked conscious knowledge and this often arises in cases where drugs are found in a vehicle driven by the accused but owned by someone else, or concealed in secret cavities, or where the accused claims that they were unaware of the contents of a package. To establish possession and conscious knowledge thereof is not always easy for the prosecution.

**9.** In a case like the present one, where there is more than one accused and each has been attributed a certain quantity of the narcotic substance, total quantity recovered is to be attributed to each petitioner/accused separately at the stage of bail. In other words, conscious knowledge plays a significant role at the bail stage. It is an established principle that deeper appreciation of the record is generally not undertaken at the preliminary stage and the court only has to see, if the accused is prima facie connected with the offence. In cases where narcotic substance is recovered from the vehicle, conscious possession often arises for drivers and passengers, however, it is a question of fact. The doctrine of knowledge of the possession is based on the evidence available on record and judicial interpretation made by this Court and the High Courts over a period of times underscore the necessity of establishing this mental element after examination of the

evidence available on record and only prosecution discharged the initial burden. The presumption arises and the defence has to discharge the same. The approach of this Court with respect to conscious knowledge of the possession somewhat sways but the dominance of the approach is that at bail stage, accused cannot be burdened with the total quantity recovered and is to be given the benefit of doubt for attributing him with only the quantity recovered from him or at his pointation. In case reported as Gul Manan Vs. The State (2021 SCMR 1804), this Court observed that the question of whether an accused, not driving the vehicle, had conscious knowledge of concealed narcotics needs serious consideration and should be determined by the trial court after recording evidence and in such like circumstances, the case against the accused, calls for further inquiry under section 497 Cr.P.C. In case reported as Nazeem Ullah and others Vs. The State (2020 SCMR 356), this Court granted bail while observing that the question of conscious knowledge or possession of the recovered narcotic substance should be determined at the time of trial. Likewise, in case reported as Anwar Khan and another Vs. The State (2006 SCMR 1343), this Court observed that mere presence in the car, which belonged to son-in-law, was insufficient to prove conscious knowledge.

**10.** There is ample case law which deals with the fact that if circumstantial evidence is placed on record, then conscious knowledge is established, but all those cases are at bail stage, where only after the examination of the evidence, same has been held accordingly<sup>1</sup>.

**11.** The crux of the above discussion and the case law on the subject is that at the stage of bail, unless there is confidence inspiring material available on record that each accused knew about the possession of the narcotic substance by the others, the total quantity cannot be attributed to every petitioner/accused separately and they are to be attributed with the quantity recovered from each petitioner/accused or on their pointation. Only after recording of the evidence and where the prosecution has proved that each individual/accused had conscious knowledge of the possession of narcotic substance or others, they can be implicated with the total quantity recovered. In the case in hand, there is nothing on record which shows that

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<sup>1</sup> The State through Director ANF, Peshawar Vs. Rashmali Khan and others (PLD 2016 Supreme Court 471), Qaiserullah Vs. State (2009 SCMR 579), Nadir Khan Vs. State (1988 SCMR 1899), Muhammad Riaz and 2 others Vs. The State (2006 SCMR 1378) and Amanat Ali and 2 others Vs. The State (2008 SCMR 991).

petitioners are aware of the others' possession of the narcotic substance, hence in the circumstances, they can only be implicated to the extent of narcotic substance recovered from their possession individually which weighs 1-kg each and punishment provided for the same in the Table contained in section 9(2) *ibid* is up to seven years, which does not fall within prohibitory clause of section 497 Cr.P.C. hence the law laid down by this Court in case reported as Tariq Bashir and 5-others Vs. The State (PLD 1995 SC 34) *supra* is attracted in the present case. There is nothing on record which shows that the exceptions laid down in the referred case are attracted in the present case. In the referred case, it was observed by this Court that where the offence does not fall within prohibitory clause, grant of bail is a rule and refusal is an exception unless there are exceptional circumstances, which *inter alia* includes repetition of offence or absconding.

**12.** An apprehension was expressed by learned Prosecutor General, ANF that one of the accused is an Afghan National and he may abscond, however, that *per se* is not a convincing ground for refusal of the bail.

**13.** For the above reasons, instant petitions are converted into appeals and are allowed; consequently, the petitioners are released on bail after arrest, in the above-mentioned case, subject to furnishing bail bonds in the sum of Rs.5,00,000/- by petitioner Muhammad Daud and Rs.2,00,000/- by petitioner Amanullah with one surety each in the like amount to the satisfaction of learned trial court.

**14.** The petitioner Muhammad Daud shall also surrender his card/passport.

**Judge**

**Judge**

**Judge**

**Islamabad**

19.06.2025

**Approved for reporting**

Zawar /-