

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE FAISAL ARAB

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CRIMINAL PETITION NO.682 OF 2020

(Against the order of Lahore High Court,
Lahore dated 08.06.2020 passed in CrI.
Misc. No. 22166-B/2020)

Abbas Raza

... Petitioner

Versus

**The State through P.G. Punjab and ... Respondents
others**

For the Petitioner : Rana Muhammad Akram, ASC

For Respondent : Mirza Muhammad Usman, Deputy Prosecutor
General and Khizar Hayat SI, police station
Ghulam Muhamma Abad, Faisalabad

Date of Hearing : 15.09.2020

ORDER

SAYYED MAZAHAR ALI AKBAR NAQVI:- Petitioner has invoked the jurisdiction of this Court under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973 calling in question the order of Single Bench of Lahore High Court, Lahore dated 08.06.2020 declining post arrest bail to the petitioner with prayer to grant the same in the interest of safe administration of justice.

2. The petitioner was involved in case bearing FIR No.214/2020 dated 02.02.2020 registered with police station Ghulam

Muhammad Abad, District Faisalabad, offence under section 9-C of the Control of Narcotic Substance Act, 1997.

As per allegation contained in the crime report it is alleged that the petitioner was selling narcotics while sitting in the "Baithak" adjacent to his house. He was taken into custody. During his personal search a polythene shopper was found containing opium weighing 1300 grams held in his right hand at the time of raid. The raiding party also took into possession one electric weighing machine and sale proceeds amounting to Rs.2129290/-. The detail of the denomination is mentioned in the crime report. Vide order dated 27.07.2020, this Court issued notice to the State.

3. At the very outset, it has been argued by learned counsel for the petitioner that the prosecution story narrated in the crime report is frivolous, concocted and it do not inspire confidence from its bare reading. Contends that the allegation that 1300 grams opium was recovered do not commensurate with the recovery of the sale proceeds of the contraband which is much higher and as such its create suspicion qua the genuineness of the prosecution's version in the crime report. Learned counsel further brought in the notice of this Court that the mother of the petitioner had sold her house just prior to the registration of this case against the consideration of Rs.2450000/- and the amount mentioned in the crime report is sale consideration of the said house which was taken into possession by the investigating officer without any legal justification. Contends that the amount mentioned in the crime report is the same amount which was recovered by the police while misusing its authority which is against the spirit of safe administration of justice.

4. On the other hand, learned Law Officer frankly conceded that the recovery of contraband do not commensurate with the sale proceeds levelled in the crime report, however, he stated that as the recovery of 1300 grams of opium is alleged which do fall within the prohibitory clause of section 497 Cr.P.C. hence, the petitioner is not entitled for concession of bail.

5. We have heard the learned counsel for the parties and gone through the record.

Bare perusal of the crime report clearly reflects that the instant occurrence has taken place in the odd hours of night at 12.50 a.m. on 02.02.2020 while the matter was registered against the petitioner on the same day at 1.05 a.m. In the month of February, when the weather is cold, selling of narcotics while sitting in the "Baithak" seems to be something astonishing, when there is remote possibility of attracting any customer at that odd time. Otherwise when it is the allegation that the petitioner is selling narcotics substance "*opium*" a contraband the use of which makes the consumer affected through central nervous system pouring negative impact in the body while making him dull, depressed, of impaired reflexes, lacking sharpness turning into a sluggish entity. All these aspects when evaluated conjointly, it lends support to the arguments advanced by the learned counsel for the petitioner qua prosecution story being result of fabrication. The liberty of a person is a precious right which has been guaranteed under the Constitution of Islamic Republic of Pakistan, 1973. The denial of the same should be such which can establish the guilt of the accused without second thought.

6. Keeping in view the facts and circumstances narrated above and the quantity of recovered contraband and seeking guidance from the case titled "**SAEED AHMED versus STATE through P.G. Punjab and**

another” (**PLJ 2018 SC 812**), we are persuaded to grant leave to appeal in the instant petition while converting it into appeal and the same is allowed. As a consequent, the petitioner is admitted to post arrest bail subject to furnishing bail bonds in the sum of Rs.2,00,000/- with one surety in the like amount to the satisfaction of learned trial court.

Judge

Judge

Islamabad,
15.09.2020
Approved for reporting.
“Athar”