

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE QAZI FAEZ ISA  
MR. JUSTICE YAHYA AFRIDI

**Criminal Petition No. 518 of 2022**

*(Against the judgment dated 04.04.2022 passed by  
the Peshawar High Court, D. I. Khan Bench in CrI.M.B.A.  
No. 142-D of 2022]*

*Syed Zulfiqar Shah*

*... Petitioner*

**Versus**

*The State through Advocate General, Khyber Pakhtunkhwa,  
Peshawar*

*... Respondent*

For the petitioner:

Mr. Saleem Ullah Khan Ranazai,  
ASC

For the State:

Mian Shafaqat Jan, Addl: AG KPK  
alongwith Shabir Khan, S.P  
Muhammad Tariq, S.I.

Date of Hearing:

07.06.2022

**ORDER**

**Yahya Afridi, J.** Syed Zulfiqar Shah ("**petitioner**") has filed this petition for leave to appeal against the concurrent orders of the Peshawar High Court, dated 04.04.2022, and of the learned trial court, dated 22.03.2022, whereby his applications for bail after arrest in FIR No.51 dated 18.03.2022 registered for the commission of offence under section 9(d) of the Khyber Pakhtunkhwa Control of Narcotics Substances Act, 2019 ("**KPK Act of 2019**") were dismissed.

2. The brief facts of the case are that the local police received information that the petitioner was involved in the sale of *charas*, whereupon, the local police officials dressed in ordinary clothes,

went to the petitioner's house to test this information by a mock purchase of *charas*, which proved positive, and thus, the information was confirmed. The police then raided the petitioner's house, arrested him and recovered from the petitioner: two closed packets of *charas*, each weighing 1205 grams; one open packet weighing 810 grams; and six currency notes of Rs.500/-, and one note of Rs.1000/-, stated to be given to the petitioner during the mock purchase.

3. The main contention put forth by the learned counsel for the petitioner was that the police did not obtain the requisite search warrant for conducting the raid on the petitioner's house, as required under section 27 of the KPK Act of 2019; therefore, the recovery of *charas* was made in violation of the law, and thus, cannot be relied upon for connecting the petitioner with the commission of the alleged offence.

4. The provisions relating to obtaining a warrant for the arrest of an accused and the search of the narcotics from a dwelling house are provided in section 27 of the KPK Act of 2019, which are identical to the provisions of section 20 of the Control of Narcotics Substances Act, 1997 ("**CNSA of 1997**"). The interpretation put to the latter provisions by this Court would therefore be pertinent for the determination of the contention of the learned counsel for the petitioner.

5. In the case of **Fida Jan v. The State**<sup>1</sup>, a three-member bench of this Court held that the provisions of section 20 of the

---

<sup>1</sup> 2001 SCMR 36

CNSA of 1997 are directory in nature, and conducting the raid, without obtaining a search warrant, would not in itself suffice to vitiate the trial. The Court held:

6. We have considered the implication of section 20 of the Act. It appears that the law givers have coached this section of law in such manner that it does not place a mandatory obligation upon the Investigating Agency to obtain search warrants from the Special Judge before conducting a raid....[From the language employed in a statute it can be gathered whether it is mandatory or directory in its nature. We have noticed that in section 20 of the Act word "may" has been used with reference to obtaining search warrants by the agency who intended to effect search of a house, place, premises or conveyance etc. It is also known principle of interpretation of statute that word "may" sometimes can be used as "shall". But perusal of section 20 of the Act suggests that law has not prescribed consequences of conducted search without obtaining the warrants from Special Court. Thus, we are of the opinion that it is directory in nature, therefore, depending upon facts and circumstances of each case if the Investigating Agency has not obtained search warrants from Special Judge before conducting raid in a house for the recovery of narcotics, this reason alone would not be sufficient, to vitiate the trial."

*(Emphasis add)*

Similarly, in the case of **Muhammad Hanif v. The State**,<sup>2</sup> this Court observed that the police officer had acted on the basis of tip-off information, and thus, it would not have been possible to undertake the time-consuming formalities at the cost of the disappearance of the accused. The Court held that non-compliance of the provisions of section 21 and 22 of the CNSA of 1997, does not vitiate the trial, and such omission being an "irregularity" can be remedied under section 537 of Cr.P.C. While in **Muhammad Younas v. Mst. Perveen**<sup>3</sup>, this Court observed that the trial court would proceed to determine the guilt or innocence of an accused

<sup>2</sup> 2003 SCMR 1237. See also Karl John v. The State PLD 2004 SC 394 and Muhammad Akram v. The State 2007 SCMR 1671.

<sup>3</sup> 2007 SCMR 393.

on the basis of the evidence produced before it, irrespective of the manner in which it is brought. The Court, in the said case, also observed that in a proper case, a Police Officer, who violates the provisions of sections 21 and 22 of the CNSA of 1997 may render himself liable to disciplinary or penal action or both, in accordance with law.

6. However, a three-member bench of this Court has cautioned in **The State v. Hemjoo**<sup>4</sup>, that non-compliance of the provisions of section 20 of the CNSA of 1997 cannot be a norm, rather it may be condoned, only in some exceptional circumstances, justifying such non-adherence. The Court held:

The combined study of sections 20 and 21 of the Control of Narcotic Substances Act, 1997 would show that only in exceptional cases in which the search warrant cannot possibly be obtained before conducting the raid, an officer authorized in this behalf can proceed for conduct of raid without the warrant but this power cannot be allowed to be used in every case in the normal circumstances.

A similar view was expressed in **Arshad Mahmood v. The State**,<sup>5</sup> with more vehemence. But in both these cases, the Court did not express any view about the directory or mandatory nature of the provisions of section 20 of the CNSA of 1997, nor did it describe the effect of non-compliance of these provisions, as to the determination of the guilt or innocence of the accused on the basis of evidence collected by committing violation of these provisions.

---

<sup>4</sup> 2003 SCMR 881.

<sup>5</sup> PLD 2008 SC 376. See also *Sakina Bibi v. The State* 2008 SCMR 1111.

7. What is important to note is that in **Zafar v. The State**<sup>6</sup>, a four-member larger bench of this Court approvingly referred to the cases of *Fida Jan* and *Muhammad Younas*, for making the observations that the provisions of sections 20 to 22 of the CNSA of 1997 are directory, and that neither can the non-compliance of the said provisions be a ground for holding the trial or the conviction awarded to an accused bad in the eyes of law nor can the conviction be set aside on this ground.

8. Scanning through the above judicial pronouncements, we note that, the considered view expressed in *Fida Jan* case by a three-member bench of this Court, as to the directory nature of the provisions of section 20 of the CNSA of 1997 still holds the field. The Court, in that case, has categorically held that because of the directory nature of provisions of section 20, the non-compliance thereof cannot be the sole ground for acquittal of the accused, and rendering the entire trial bad in the eye of law. This considered view of a three-member bench of this Court has neither been dissented to by any co-equal bench nor overruled by a larger bench.

9. Thus, we hold that the provisions of section 27 of the KPK Act of 2019, which are identical to the provisions of section 20 of the CNSA of 1997, are also directory in nature, and their non-compliance though may entail departmental disciplinary action or penal action or both against the delinquent police official, but do not affect the admissibility of the fact of recovery of the narcotics in

---

<sup>6</sup> 2008 SCMR 1254.

evidence before the trial court. The contention of the learned counsel for the petitioner is, therefore, rejected.

10. It is not a sufficient ground to grant bail because a warrant was not obtained in a case within the prohibitory clause of section 497, Cr.P.C. And, we find no legal error in the impugned orders which had declined the relief of bail to the petitioner pending his trial. Therefore, the petition is dismissed, and leave to appeal is declined.

Judge

Judge

Announced in Open Court on 21<sup>st</sup>.06.2022 at Islamabad

Judge

Islamabad  
Approved for reporting  
*Arif*