

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Mushir Alam
Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Petition No.520 of 2020

*(Against the order dated 30.4.2020 passed by the
Lahore High Court Lahore in Cr. M. No.8114-
B/2020)*

Hazrat Nabi Shah alias Hazrat Khan

...Petitioner(s)

Versus

The State & another

....Respondent(s)

For the Petitioner(s): Mr. Muazzam Butt, ASC
Syed Rifaqat Hussain Shah, AOR

For the State: Rana M. Arif Kamal Noon
Prosecutor General, Punjab *(on court notice)*
Rana Abdul Majeed, Addl. P.G. Punjab
Mr. Sarwar Sindhu, Addl. P.G. Punjab
Rai Tahir, Addl. I.G. CTD Punjab
Sohail Khan, Inspector/IO, CTD, Sargodha
Syed Asad Muzaffar, SP Model Town Lahore
Altaf Hussain, DSP
Nisar Ahmed, SI/Incharge Investigation
Munir Ahmed, SI

For co-accused (Ismail Khan): Mr. Aftab Alam Yasir, ASC
along with Ismail Khan, in person.

Date of hearing: 25.08.2020.

ORDER

Qazi Muhammad Amin Ahmed, J.- On 4.12.2019, pursuant to a tip off, Hazrat Nabi Shah and Ismail Khan, residents of Khyber Pakhtunkhwa were intercepted by a contingent of CTD Sargodha along with a cache that included explosives, an hand grenade, a .30 caliber pistol as well as live munitions. A learned Division Bench of Lahore High Court Lahore granted bail to Ismail Khan on 23.4.2020, however, declined the motion by Hazrat Nabi Shah vide order dated 30.04.2020. It is in this backdrop that Hazrat Nabi Shah alias Hazrat Khan petitioner approached this Court for bail when vide order dated 30.07.2020 Ismail Khan co-accused was sent for to show cause as to why bail granted to him be not cancelled.

The High Court granted bail to Ismail Khan co-accused on the ground that hand grenade, statedly recovered at his instance, was not sent to any notified expert for confirmation of its explosive potential and that the official who defused the bomb was not a declared “*notified expert*”. It is on this finding that the learned counsel for Hazrat Nabi Shah alias Hazrat Khan sought bail on the ground of requirement of principle of consistency besides arguing that petitioner’s family had lodged complaint of his having been a missing person much earlier than his arrest in the present case and it is for this reason that a fake recovery is foisted upon him to validate his illegal detention.

Pursuant to notice, Ismail Khan co-accused, is in attendance; adopting the reasons of the High Court, it is argued by his learned counsel that he had been rightly released on bail as his culpability in the absence of a forensic report squarely brought his case within the purview of further probe; he has next argued that once bail is granted, exceptionally strong grounds are required to recall the freedom, a practice consistently followed by this Court. Learned Prosecutor General Punjab has faithfully defended the State. It is argued that the accused, apparently having no inter se relationship, hailing from the remoteness of a different province, were arrested red-handed with a substantial volume of explosives and arms with huge capacity to play havoc in a populous city and as such there was no occasion for grant of bail to one of them on a ground that was not only legally untenable but also could not be attended without travelling beyond the barriers of tentative assessment, a journey prohibited by law.

2. Heard. Record perused.

3. The accused, both teenagers, respectively belong to different parts of Khyber Pakhtunkhwa, i.e. Peshawar and Mehmand Agency; they had apparently no business to be in a distant city and as such hypothesis of their manipulated arrest, as argued at the bar, may not find a buyer. Similarly, seizure of considerable quantity of explosives that included an hand grenade, a pistol and cash cannot be brushed aside on a bald denial alone as the local authorities do not appear to have an axe to grind. On the contrary, their surprise arrest and recovery of contraband constituted ‘*reasonable grounds*’ to bring their plea within the remit of *Prohibition*, standing in impediment to their release on bail.

On the date of their arrest i.e. 04.12.2019, the Investigating Officer along with Muhammad Suleman, Bomb Disposal Squad Expert attached

with Civil Defence Sargodha, defused the hand grenade and prepared a memo with following remarks:-

“(a) It is certified that A/M Explosives material found alive, serviceable, operational and can be used for any types of terrorists activities.

(b) It is further clarified that explosive cannot be extracted from hand grenade and detonators for preparation of samples parcels as they contains High/Primary high explosive which is very sensitive to heat and spark.”

The above observations of the expert escaped the notice of the High Court that also appears to have ignored forensic reports confirming awful lethality of other items seized in the totality of circumstances and, thus, erroneously misdirected itself to grant bail to Ismail Khan, co-accused, inexorably placed in an identical position with his co-accused, rightly denied the concession. Argument that once bail is granted, recall requires most extraordinary measures is beside the mark as in an appropriate case, like one in hand, the Court would unhesitatingly strike down the error, manifestly reflecting upon the law. Seizure of high intensity explosives/devices given their devastating potential/threat to unsuspecting public at large must be viewed with appropriate caution, therefore, having regard to the legislative intent, exercise of discretion in bail matters needs to be contoured carefully. Criminal Petition No.520 of 2020 fails. Leave declined. Order dated 23.04.2020 is set aside; bail granted to Ismail Khan co-accused is cancelled. The above observations, however, shall not shadow the trial, to be essentially settled on the strength of evidence alone, with all convenient dispatch, preferably within a period of six months.

Judge

Judge

Islamabad, the
25th August, 2020
Not approved for reporting
Azmat/-