

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Mushir Alam

Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Petition No. 958 of 2020

*(Against the order dated 14.4.2020 passed
by the Peshawar High Court Peshawar in
Crl. MBA No.106-D/2020)*

Muhammad Irfan

...Petitioner(s)

Versus

The State & another

...Respondent(s)

For the Petitioner(s): Ch. Muhammad Ayub Arbab Gujar, ASC

For the State: Raja Inaam Ameen Minhas,
Ch. Ehtisham ul Haq,
Special Prosecutors, ANF

For the co-accused: Khawaja Azhar Rasheed, ASC with
Dilshad Khan, co-accused.

Date of hearing: 15.10.2020.

ORDER

Qazi Muhammad Amin Ahmed, J.- On a tip off, Muhammad Irfan, petitioner, accompanied by Dilshad Khan, co-accused, was intercepted by a contingent of Anti Narcotic Force, Dera Ismail Khan at 13:00 hours on 17.1.2020; upon search, a substantial cache of cannabis, weighing 12 kilograms, stealthily concealed underneath the rear seat of the vehicle, driven by them, was recovered, a portion whereof, was wrapped around the belly of Dilshad Khan co-accused. The contraband as well as the vehicle bearing Registration No.BHH-686/Sindh were secured vide inventories of even date.

After failure with the learned Special Judge, Muhammad Irfan petitioner approached the High Court through Crl. MB No.57-D/2020 for his release on bail, declined by a learned Judge-in-Chamber on 27.2.2020. The same learned Judge, however, granted bail to Dilshad Khan, co-accused in Crl. MBA No.90-D/2020 on 25.3.2020, on the basis whereof, the present petitioner approached the High Court for his release on bail on the principle of requirement of consistency,

dismissed by another learned Judge-in-Chamber vide order dated 14.4.2020, impugned before this Court through the titled petition. *Prima facie* found by us to have been released on bail for reasons unsustainable in law, Dilshad Khan, co-accused, was sent for vide order dated 3.9.2020 to show cause as to why bail granted to him by the High Court may not be cancelled.

Khawaja Azhar Rasheed, ASC has defended grant of bail to Dilshad Khan co-accused; citing various judgments of this Court, he contends that once bail is granted, exceptionally strong grounds, *pari materia* with those applicable to interference with acquittal, are required to rescind the concession; he adds that the concession was never abused and in the wake of commencement of trial, cancellation of bail would be a measure far from being expedient. The Court has traditionally exercised restraint to recall freedom, concluded the learned counsel.

Ch. Muhammad Ayub Gujjar, ASC, learned counsel for Muhammad Irfan petitioner has prayed for equal treatment; according to him, the petitioner being identically placed with his co-accused is squarely entitled to avail the same concession. “*Sauce for the goose is sauce for the gander*”, asserted the learned counsel.

2. Heard. Record perused.

3. A different regime, somewhat narrowly jacketed, is applied to consider the propriety/desirability of cancellation of bail, once granted by a competent tribunal, on the assumption that apprehended fallout of interim freedom under an interlocutory arrangement, even though granted under error, can be indemnified through final adjudication, however, the benign concept of condonation cannot be applied, without being unconscionable in cases structured upon findings inherently anomalous, flawed or mutually destructive and inconsistent, more so in category of offences with restrictions statutorily heavier on offender’s release on bail. In the present case, the learned Judge shortly before releasing Dilshad Khan on bail i.e. 27.2.2020, did not feel persuaded to allow bail to Muhammad Irfan petitioner on the following grounds:

“It appears from the record available on file that huge quantity of Charas was recovered on pointation of the accused/petitioner from the motorcar driven by him. The samples of recovered contraband were sent to the FSL as per requirement of law and the report of Chemical Examiner is in positive. The offence with which the

*accused/petitioner has been charged falls within
restrictive clause of Section 497 Cr.P.C.*

However, the learned Judge proceeded to grant bail to Dilshad Khan co-accused even in the absence of his counsel on 25.3.2020 on the basis of arguments, never addressed at the bar and for reasons diametrically incompatible recorded in the earlier order. Reference to the outbreak of *Covid-19 Contagion* is also beside the mark in view of decision dated 7-4-2020 by this Court whereby blanket bails granted by all the High Courts on the ground of prevalence of *Pandemic* were cancelled by this Court.

Grant of bail is not an irrevocable charter of freedom; in appropriate cases, while exercising charitable restraint, nonetheless, it is a judicial responsibility to rectify situations leading towards embarrassing anomalies, as is likely to come about in the present case. Grant of bail to Dilshad Khan co-accused cannot be countenanced while withholding the concession to the co-accused, equally disentitled to be released on bail in view of the merits of the case that manifest interception of both the accused in a vehicle carrying a substantial quantity of the contraband, craftily concealed and recovered on disclosures, by both of them, from underneath the seat inside the cabin as well as wrapped around the body, bringing their case within the 'Prohibition' provided under section 51 of the Control of Narcotic Substances Act, 1997. Failure by the police contingent to register the case under the Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019, an error open to rectification, does not by itself mitigate the enormity of the crime nor possibly furnish a ground for their release on bail.

Overwhelming evidence, *prima facie* pointed, equally upon both the accused, admits no space to contemplate any distinction and as such does not allow to countenance the error, therefore, bail granted to Dilshad Khan vide order dated 25.3.2020 is cancelled; he shall be taken into custody to face indictment. Concomitantly, Criminal Petition No.958 of 2020 filed by Muhammad Irfan fails. Leave declined.

Judge

Judge

Islamabad, the
15th October, 2020
Not approved for reporting
Azmat/-