

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Asif Saeed Khan Khosa, CJ
Mr. Justice Mazhar Alam Khan Miankhel
Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Appeal No. 282 of 2019

(Against the order dated 16.05.2019 passed by the Islamabad High Court, Islamabad in Criminal Miscellaneous No. 283-B of 2019)

Anti-Narcotics Force through its Regional Director/Force Commander, A.N.F. Rawalpindi

...Appellant

versus

Qasim Ali

...Respondent

For the appellant:

Ch. Ehtisham-ul-Haq, Special
Prosecutor, Anti-Narcotics Force
Syed Rifaqat Hussain Shah, AOR
Mirza Abdul Rehman, A.D.
Faizan Khawaja, I.O.

For the respondent:

Syed Wusat-ul-Hassan Shah, ASC
with the respondent in person.

Date of hearing:

21.08.2019

JUDGMENT

Asif Saeed Khan Khosa, CJ.:

Criminal Miscellaneous Application No. 1233 of 2019

This miscellaneous application is allowed and the rejoinder filed by the respondent is permitted to be brought on the record of the main appeal. Disposed of.

Criminal Appeal No. 282 of 2019

2. Through this appeal by leave of this Court granted on 26.07.2019 the Anti-Narcotics Force/appellant has assailed the order dated 16.05.2019 passed by a learned Division Bench of the Islamabad High Court, Islamabad in Criminal Miscellaneous No. 283-B of 2019 whereby the respondent was admitted to post-arrest bail in case FIR No. 4 registered at Police Station Anti-Narcotics Force/R.D. North, Rawalpindi on 12.01.2019 in respect of offences under sections 9(c) and 15 of the Control of Narcotic Substances Act, 1997.

3. According to the prosecution the respondent was apprehended red-handed while sitting in a motorcar through the search of which vehicle *charas* weighing 1600 grams, cocaine weighing 57 grams, ice weighing 10 grams and some other intoxicants had been recovered and subsequently a report had been received from the Chemical Examiner in the positive. The respondent had been admitted to post-arrest bail by the High Court mainly on the grounds that in view of the sentencing guidelines of the Lahore High Court, Lahore issued in the case of *Ghulam Murtaza and another v The State* (PLD 2009 Lahore 362) the respondent was not likely to be punished for a period of imprisonment attracting the prohibitory clause contained in subsection (1) of section 497, Cr.P.C.; a co-accused of the respondent was not apprehended at the spot; and the case against the respondent called for further inquiry into his guilt within the purview of subsection (2) of section 497, Cr.P.C. We, however, have not been able to find the said grounds weighing with the High Court to be valid or sufficient for the purpose of admitting the respondent to post-arrest bail in the present case because all the said considerations were in derogation of the law. It has already been clarified by this Court in the case of *Socha Gul v The State* (2015 SCMR 1077) that the sentencing guidelines issued by the Lahore High Court, Lahore in the above mentioned case of *Ghulam Murtaza* are not relevant at the stage of bail or during the trial.

Failure of the raiding party to apprehend the respondent's co-accused could hardly react upon the merits of the respondent's case for bail. Section 51 of the Control of Narcotic Substances Act, 1997 clearly ousts application of the provisions of section 497, Cr.P.C. to the cases under the Control of Narcotic Substances Act, 1997 and, thus, any reference to subsection (2) of section 497, Cr.P.C. by the High Court while admitting the respondent to bail was uncalled for.

4. We have pertinently observed that the merits of the case against the respondent had not been attended to by the High Court at the time of passage of the impugned order by it. It shall, therefore, be fair and proper if instead of canceling the respondent's bail an opportunity may in the first instance be afforded to the High Court to attend to the merits of the case against the respondent for the purposes of his admission to bail. This appeal is, therefore, allowed, the impugned order passed by the High Court on 16.05.2019 is set aside, the matter of the respondent's bail is remanded to the High Court for a fresh decision of the same on the merits of the petitioner's case and during the interregnum the respondent shall be deemed to be on ad-interim post-arrest bail which the High Court may confirm or not. This appeal is disposed of in these terms.

Chief Justice

Judge

Judge

Islamabad
21.08.2019

Approved for reporting.

Arif