

2010 M L D 1073

[Peshawar]

Before Mazhar Alam Khan Miankhel, J

MUHAMMAD SHAKIL---Petitioner

Versus

THE STATE---Respondent

Criminal Miscellaneous No. 421 of 2010, decided on 16th April, 2010.

Criminal Procedure Code (V of 1898)---

----S. 497---Control of Narcotic Substances Act (XXV of 1997), S.9(b)---Possession of narcotics---Bail, refusal of---Eight capsules each containing 50 grants of heroin were allegedly recovered from private body parts of the accused---Four out of said eight capsules had to be retrieved from his body through application of medical process--Ingenuity shown by the accused in hiding the capsules reflected that he was a trained drug trafficker---No doubt, the punishment for alleged offence was seven years' imprisonment and High Court had considered bail petitions in similar cases, but accused's skill in concealing the narcotic substance had raised apprehension that the accused would repeat the offence---Petitioner was not admitted to bail, in circumstances.

Aurangzeb Khan for Petitioner.

Arshad Ali Nowshervi for Respondent.

Date of hearing: 16th April, 2010.

JUDGMENT

MAZHAR ALAM KHAN MIANKHEL, J.---After refusal of concession of bail by the

lower forums in a case registered under section 9(c) C.N.S.A. for the recovery of 400 grams heroin vide F.I.R. No.285, dated 11-3-2010 Police Station Gul Bahar, Peshawar, the accused petitioner has filed this petition for his release on bail.

2. The learned counsel for the petitioner at the very outset submitted that the alleged recovery of narcotics falls under section 9(b) of the C.N.S.A. punishment provided for which is seven years, so the case of the accused petitioner is covered by section 497(1), Cr.P.C. He further submitted that the accused has no previous history of commission of such offences and requested for his release on bail.

3. As on the other hand, Arshad Ali Nowshervi, learned counsel appearing on behalf of the State, submitted that no doubt the case of the accused petitioner does not fall under the prohibitory clause of section 497, Cr.P.C., but the recovery from the personal possession of the accused is 400 gram of heroin and the manner and the way the petitioner tried to hide the said heroin itself speaks that he remained involved in such-like activities. He was further of the view that he cannot be released on bail mere on the ground that his case does not fall under the prohibitory clause of section 497, Cr.P.C. and it is not a rule to be followed in each and every case.

4. After hearing the learned counsel for the parties and having gone through the record of the case, it transpired that some eight big capsules each weighing 50 gram were hidden by the petitioner in a very unique manner as the same were recovered from the private parts of the accused and four of such capsules were recovered through a medical process which on the face of it reflects that the accused was a very experienced and a trained one, trafficking the narcotics drugs. No doubt, under clause (b) of section 9 of the Control of Narcotic Substances Act, 1997, the punishment provided for the offence is seven years and that too, the bail petitions have also been considered by this Court on the plea that the quantum of recovery should commensurate with the quantum of punishment as maximum punishment provided for the offence in such like cases is not awarded.

5. The use of narcotic drugs like charas, opium and heroin have alarmingly increased in our society which is affecting our youth. This Court also cannot shut its eyes to this situation. We as a whole have to realize our responsibility to check this menace and our laws in this regard should also commensurate with requirements and need of the day. Such addicts/accused specially the addicts of heroin should straightaway be sent to the reforming centres instead of putting them in Jail. One should be more realistic that such type of addicts/accused again have any easy access to the narcotics of their choice in jail. Our jail authorities are also supposed to revisit their administrative loopholes. When there are such non-governmental set-ups who are delivering their services to minimize and overcome such menace in the society. The Government should encourage such organizations which are serving to save the nation and humanity. We as a nation are in such a state of affairs that our legislators are, required to revisit the said laws and besides punishment of such laws, there must be some reformative measurements also.

6. Now coming to the present case, no doubt, punishment provided for the offence is seven years and that too keeping in view the quantum of recovery, maximum dose of punishment could not be awarded to the petitioner. However, the manner of hiding the drugs suggests that there is an apprehension and danger that the accused petitioner would repeat the offence. So in this view of the matter, this Court is of the view that the accused petitioner is not entitled to the concession of bail. Hence, this bail petition is dismissed as such. However, the trial Court is directed to conclude the trial as early as possible but not later than three months. It is expected that the observations made in the case would not affect and prejudice

the trial of the case.

7. Before parting with the judgment, the concerned authorities are supposed to look for the observations made above specially for the present accused and generally for all such persons involved in such-like offences.

A.R.K./138/P

Petition dismissed.