

2013 M L D 1860

[Peshawar]

Before Qaiser Rashid Khan, J

Mst. NAZO---Applicant

Versus

The STATE---Respondent

Criminal Miscellaneous Bail Application No.27 of 2013, decided on 1st March, 2013.

Criminal Procedure Code (V of 1898)---

---S. 497---Control of Narcotic Substances Act (XXV of 1997), S.9(c)---Possession of narcotics---Bail, refusal of---Pregnant female accused with sucking baby---Accused-lady while travelling in a car was stopped at a police checkpoint and upon her search five kilograms of charas was found tied with the string of her trouser---Plea of accused was that she was mother of a suckling baby and was also four months' pregnant---Validity---Accused was stopped at a police checkpoint and searched by a lady constable---Report of samples sent to Forensic Science Laboratory was in positive---Nothing was available on record to show that witnesses had any mala fide or ulterior motives to falsely implicate the accused---Had the accused been concerned about her suckling baby, she would not have resorted to indulge in such activity which had afflicted the whole society and especially the younger generation---Prima facie accused was connected with the commission of the offence---High Court observed that off late narcotic mafia had devised new modes and means of smuggling narcotics by employing ladies and youngster in the hope that even if they got caught red-handed, they might be extended concession of bail by the courts on grounds of womanhood or juvenility and that such conduct amounted to taking liberty with the law of the land---Bail petition was dismissed accordingly.

Mian Jamal Shah for Applicant.

Sangeen Khan for the State.

Date of hearing: 1st March, 2013.

JUDGMENT

QAISER RASHID KHAN, J.- Being unsuccessful in getting bail from the court of learned Judge Special Court, Peshawar vide order dated 2-1-2013, the accused/petitioner Mst. Nazo has come up to this court for the same relief in case F.I.R. No.1493 dated 27-12-2012 registered under section 9(c) of the Control of Narcotic Substances Act at Police Station Hayatabad, Peshawar.

2. The allegations as contained in the F.I.R. lodged on the report of Namdar Khan SI, Police Station Hayatabad, Peshawar are that on 27-12-2012 at 1630 hours, the accused/petitioner while travelling in a motorcar No.5090/LRR was found in possession of five kilograms of charas tied with the string of her trouser.

3. Learned counsel for the petitioner contended that the accused/petitioner is innocent and has been falsely charged; that the occurrence is alleged to have taken place at a busy place but the local police failed to associate any independent witness to the search and recovery proceedings; that co-accused of the petitioner has already been released on bail and that the accused/petitioner is not only a mother of a suckling baby, but also pregnant of four months and thus she is entitled to the concession of bail.

4. Conversely, the learned State counsel while opposing the bail petition tooth and nail supported the impugned order on the grounds as enumerated therein.

5. Arguments heard and record perused.

6. As per the F.I.R., on 27-12-2012, Namdar Khan SI along with Zar Wali Khan A.S.I., Zakir Khan No.1822 had laid 'Nakabandi' at Karkhano Check post when at 1630 hours, a motorcar No.5090/LRR wherein two women were sitting was stopped on suspicion. Through lady constable Rifat, they were alighted from the motorcar and searched. On the personal search of the accused/petitioner, five packets of charas containing 1 kilogram charas each tied with the string of her trouser were recovered which on weighing came to be five kilograms. The other woman disclosed her name as Mst. Bakht Zari wife of Usman Jan. The contraband charas was taken into possession vide recovery memo witnessed by Zarwali Khan, ASI, Zakir Khan No.1822 and Rifat No.5707. The samples taken from the charas were sent to F.S.L, the report of which is in positive. At present, nothing is available on the record to show that the witnesses had any mala fide or ulterior motive to falsely implicate the petitioner. The case of the accused/petitioner is distinguishable from her co-accused who has been released on bail. The argument of the learned counsel for the petitioner that the accused/petitioner has a suckling baby and is also pregnant of four months is not convincing. Had the petitioner been concerned about her suckling baby, she would not have resorted to indulge in such activity which has afflicted our whole society and especially the younger generation. Off late, the mafia engaged in narco-business has devised new modes and means of smuggling by employing ladies and youngsters in the hope that even if caught red handed, they may be extended the concession of bail by the courts on the ground of womanhood or juvenility as the case may be. Such conduct amounts to taking liberty with the law of the land.

7. Taking a tentative assessment of the available record, the accused/petitioner is prima facie connected with the commission of offence and is thus not entitled to the concession of bail. However, as the challan in the case is complete, therefore, the prosecution is directed to submit the same within a fortnight, whereafter the learned trial judge should decide the case within two months.

8. For the reasons mentioned above, the instant bail petition being bereft of any merit is hereby dismissed.

9. Any observations made in the order being tentative in nature should in no way prejudice the proceedings before the learned trial Court.

MWA/236/P

Bail refused