

IN THE PESHAWAR HIGH COURT,  
PESHAWAR,  
[Judicial Department].

**Cr.Misc.BA No.643-P/2018**

Awais Ali son of Sabit Ali,  
r/o Tappa Khwaidad Khel Orakzai Agency.

Petitioner

**VERSUS**

The State

Respondents

For Petitioner :-  
State :-

Mr. Ibrar Alam, Advocate.  
Mr. Moeen ud Din Hamayoun, AAG.

Date of hearing:

**09.04.2018**

**ORDER**

**ROOH-UL-AMIN KHAN, J:-** Petitioner Awais Ali son of Sabit Ali, seeks post arrest bail in case FIR No.136 dated 15.02.2018, registered under section 9 (c ) Control of Narcotic Substances Act, 1997 in Police Station City Kohat.

2. As per contents of FIR, prosecution case against the petitioner is that on 15.02.2018 at 0910 hours, he while travelling in a Suzuki vehicle as a passenger having a plastic sack, was deboarded by Fayaz Khan SHO along with other police officials, in front of old Tablighi Markaz Hangu road Kohat and on search of the sack, recovered 08 packets *charas Gardha*, each packet weighing 1200 grams, making the total of 9600 grams. From each packet, 05 grams were separated and sealed in parcel as sample for

chemical analysis by the FSL. The petitioner was arrested there and then, hence, this case.

3. Having heard the arguments of learned counsel for the parties, it appears from the FIR that neither the Suzuki in which the petitioner was allegedly trafficking narcotics has been taken into possession nor has its driver, conductor or any passenger has been cited as witness to the recovery proceeding, so much so that the name of driver and registration of the Suzuki vehicle is a shrouded mystery. In absence of the above crucial pieces of evidence, whether the prosecution would be able to prove the guilt of the petitioner in the mode and manner as alleged in the FIR, is a serious debatable question which makes the case of the petitioner arguable for the purpose of bail. The petitioner has no previous history of involvement in such like offence. Investigation qua him is complete and he is no more required for further interrogation. Thus, keeping him behind the bars will serve no useful purpose. It is settled law that a mistaken relief of bail can be repaired by convicting the accused if proved guilty during trial, but no proper reparation can be offered to an accused in case of his acquittal in the long run.

4. The argument of learned counsel for the petitioner that learned Judicial Magistrate was not competent to pass an order of destruction of the case property/narcotics before trial, is not tenable because under sub-section (4) of

section 33 of Control of Narcotic Substances Act, 1997, a Narcotic drug, psychotropic substance or controlled substance seized under this Act shall be disposed of under section 516A of the Code of Criminal Procedure, 1898 (Act V of 1898). The 2<sup>nd</sup> and 3<sup>rd</sup> provisos attached to section 516A Cr.P.C. provide a proper mechanism for destruction of dangerous drug, intoxicant, intoxicating liquor or any other narcotic. For the sake of convenience and ready reference, the aforesaid provisos are reproduced below:-

“Provided further that if the property is dangerous drug, intoxicant, intoxicating liquor or any other narcotic substances seized or taken into custody under Dangerous Drugs Act, 1930 (II of 1930), the Customs Act, 1969 (IV of 1969), the Prohibition (Enforcement of Hadd) Order, 1979 (P.O. 4 of 1979), or any other law for the time being in force, **the Court may, either on an application or of its own motion and under its supervision and control, obtain and prepare such number of samples of the property as it may deem fit for safe custody and production before it or any other Court and cause destruction of the remaining portion** of the property under a certificate issued by it in that behalf; (Emphasis supplied).

Provided also that **such samples shall be deemed to be whole of the property** in any inquiry or proceedings in relation to such offence before **any authority or Court.**” (emphasis supplied).

5. The Statutes governing the destruction of seized narcotics do not provide any specific time for such destruction. The words “**such samples shall be deemed to be whole of the property in any inquiry or proceedings in relation to such offence before any authority or Court**” employed in 3rd proviso to section 561A Cr.P.C. empowered the Court to pass an order of destruction of narcotics at any stage which may even be before the trial. In this case, the learned Judicial Magistrate, Kohat on the direction of the learned Sessions Judge, after adopting the mechanism provided under 2<sup>nd</sup> and 3rd provisos to section 516A Cr.P.C. has ordered the destruction of narcotics and in this regard has also issued a proper certificate under his signature and seal of the Court.

4. Accordingly, this petition is allowed. Accused/petitioner is admitted to bail provided he furnishes bail bonds in the sum of rupees two lacs with two local, reliable and resourceful sureties each in the like amount to the satisfaction of learned Illaqa Judicial Magistrate/MOD concerned.

**Announced:**  
**09.04.2018**

*Siraj Afridi P.S.*

**JUDGE**

