

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT PESHAWAR
JUDICIAL DEPARTMENT

Cr.Misc./BA. No. 1151-P/2017.

Abid Ali vs. The State

JUDGMENT

Date of hearing: 30.6.2017.

Petitioner: by Syed Mubashir Shah, advocate.

State by Mr. Muhammad Hasnain, advocate.

SHAKEEL AHMAD, J. - Abid Ali, petitioner seeks post arrest bail in crime report No.206 dated 6.4.2017 under section 9 (c) of the Control of Narcotic Substances Act, 1997 registered at Police Station, Kalu Khan (Swabi).

2. Perusal of the record reveals that on 6.4.2017 at 14.30 hours, complainant Hukam Khan ASI alongwith other police officials were present at Mardan-Swabi road near Nehr for the purpose of nakabandi, in the meanwhile, a rickshaw coming from Mardan side was stopped, on search two packet charas were recovered from toll box of the said rickshaw, each packet contained 1100 grams charas. The complainant separated 05/05 grams from each packet of charas for the purpose of FSL analysis and the same was sealed in parcels No.1 and 2, while the remaining charas 2190 grams were sealed in parcel No.3. The driver of the rickshaw disclosed his

name as Abid Ali son of Muhammad Sher, on personal search of the accused, his CNIC was recovered. The accused was apprehended on the spot, whereafter, murasila was drafted and sent to the police station through Constable Arif No.6 for recording the FIR.

3. The learned counsel for the accused/petitioner in support of bail petition contended, that the petitioner has falsely been implicated, he is not a previous convict, lastly, he submitted that while hearing a bail petition, the court is not to keep in mind the maximum sentence provided by the law for the charged offence, but, the one which is likely to be imposed.

4. As against that, the learned counsel appearing on behalf of the State, vehemently, opposed the bail application on the ground that huge quantity of charas has been recovered from the toll box of the rickshaw in question, driven by accused/petitioner, and that the offence falls within the prohibition contained in section 497 Cr.P.C.

5. I have heard the learned counsel for the parties and gone through the record.

6. The record reveals that the petitioner was found in possession of 2200 grams charas. The contention of the learned counsel for the petitioner that while hearing a petition for the grant of bail, the court has not to keep in mind the maximum sentence provided by law for charged offence, but

one which is likely to be imposed, is misconceived. The offence with which the petitioner is charged is punishable with death or life imprisonment or imprisonment for fourteen years. The sentence mentioned in the referred case are to be considered only when after trial the sentence is to be imposed on a convict. Reliance can well be placed on case titled Socha Gul vs. The State (2015 SCMR-1077). The record reflects that recovery of charas was made from the toll box of the rickshaw in question, driven by the petitioner. It has been held by the Hon'ble Supreme Court of Pakistan in the case of Nadir Khan vs. The State (1988 SCMR-1899) that a driver of the vehicle is to be saddled with responsibility of conscious possession of narcotic substance found in the vehicle being driven by him. The report of the chemical examiner regarding the samples of recovered substance has already been received in the positive. After completion of investigation a challan has been submitted on 10.4.2017, against the petitioner, offence u/s 9(c) CNS Act, 1997, is punishable with death or imprisonment for life or imprisonment for a term which may extend to fourteen years and shall also be liable to fine, which may be upto one million rupees and by virtue of provisions of section 51 of CNS Act, 1997, there is prohibition against grant of bail in such cases.

7. The learned counsel for the petitioner has failed to bring on record any material, which may show any

malafide or malice on the part of police for his false involvement in the case in hand.

8. In view of what has been discussed above, the petitioner is not entitled for bail. His bail application is, therefore, dismissed. However, the prosecution is directed to conclude the trial expeditiously within a period of *four months* from the date of receipt of file from this Court. Order accordingly.


JUDGE

Announced.

Dated: 30.06.2017.

T.Shah

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