

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

Cr.Misc.BA No.3269-P/2021

Khaista Gul son of Jan Gul,
r/o Khan Mast Colony District,
Peshawar.

Petitioner (s)

VERSUS

The State

Respondent (s)

For Petitioner (s) :-

Mr. Numan Sattar, Advocate

For State :-

Mr. Arshad Ahmad, AAG.

Date of hearing:

22.10.2021

ORDER

ROOH-UL-AMIN KHAN, J:-Petitioner Khaista Gul, seeks post arrest bail in case FIR No.1267 dated 23.08.2021, registered under section 11(b) Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019, at Police Station Agha Mir Jani Shah, Peshawar.

2. According to First Information Report (“FIR”), Arif Khan S.I was receiving public complaints for the last so many days against a white beard man dealing in the detestable business of selling (ICE) to people. On 23.08.2021 he received spy information regarding presence of the said person in the graveyard of Kakshal for the purpose of selling Ice to his special customers. On the said information, Arif Khan SI along with other police officials reached the spot and at 1900 hours overpowered the said person, who on query disclosed his name as

Khaista Gul (the petitioner). On search, Methamphetamine (Ice), contained in various sachets (Purri), weighing 700 grams were recovered from side pocket of his shirt. The Seizing Officer after amalgamating entire quantity of all sachets, separated one consolidated sample of 01 gram for chemical analysis by the FSL. The petitioner was arrested there and then, hence, this case.

3. Arguments of learned counsel for the parties heard and record perused.

4. In the FIR the Seizing Officer, has clearly mentioned that the recovered contraband Methamphetamine (Ice) weighing 700 grams was consists of so many sachets and that he after amalgamating the quantity of each sachet, separated one consolidated sample of 01 gram for chemical analysis by the FSL. He has neither mentioned number of the recovered sachets nor the quantity of narcotics in each sachet in the FIR and recovery memo. When the worthy AAG was confronted with the above aspect of the case, he stated that while going through record he also noticed the said slackness on the part of Arif Khan SI/the Seizing Officer, therefore, he summoned him and when confronted with factum of non-mentioning of number of sachets and quantity of narcotics in each sachet in the FIR and recovery memo, he could not wriggle out of the situation and admitted that he has neither given any detail of the recovered sachets nor weight of the quantity of each sachet. According to him he has mentioned in the recovery about 699 grams Ice along with plastic envelopes sealed in parcel No.2. In absence of mentioning the

number of sachet, and quantity of each sachets and extracting a consolidated sample of 01 grams from entire quantity, whether the prosecution would be able to bring home guilt the accused, are the fatal questions to be answered by the prosecution during trial, however, at the moment makes the case of the petitioner arguable for the purpose of bail. Needless to mention that the question of extracting single consolidated samples after amalgamation of so many packets has already been set at naught by the Hon'ble Apex Court in case titled, **“Para Din and others Vs the State” (2016 SCMR 806)**. For the sake of convenience and ready reference, relevant para of the judgment (supra) is reproduced below.

“As regards Jillani appellant we note that according to the prosecution recovery in this case had been made in respect of *chars Pukhta* weighing 162 Kilograms contained in 162 packets weighing one Kilogram each and *chars Kham* weighing 34 Kilograms contained in 34 packets weighing one kilogram each and after the *said recoveries one consolidated sample of 100 grams was separated from all the packets containing charas Pukhta and one consolidated sample weighing 50 grams had been separated from the packets containing chars Kham.* According to the law declared by this court in the case of Ameer Zeb vs the State (PLD 2012 SC 380), *the weight of two packets, i.e. two Kilograms of chars could have been considered against Jillani appellant for the purpose of his conviction and sentence.* This appeal is therefore, partly allowed to the extent of Jillani appellant, his conviction for an offence under section 9 (c) of the Control of Narcotic Substances Act, 1997, is maintained but his sentence is reduced to rigorous imprisonment for four years and six months and a fine of Rs.20,000/- or in default of payment thereof to undergo simple imprisonment for five months.

The benefit under section 382-B Cr.P.C. shall be extended to the appellant”.

Without dilating upon the conduct and slackness of the Seizing and Investigation Officer, at this stage, it would be sufficient to say that in light of the judgment (supra), at the moment, only quantity of one sachet shall be taken into consideration against the petitioner while dealing with his plea of bail, which surely is still unknown.

5. For what has been discussed above, this petition is accepted. Petitioner is allowed bail. He shall be released on 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 the learned Illaqa Judicial Magistrate/MOD concerned.

6. The learned Additional Registrar (Judicial) of this Court is directed to send copy of this order to the worthy Inspector General (**IG**) and the Capital City Police Officer (**CCPO**) for looking into the matter and slackness of the Police Officers, particularly, in narcotics cases, which has always remained a cause of destruction of prosecution’s case. Any step and action taken in the matter shall be intimated to this Court through the Additional Registrar (Judicial).

Announced:

22.10.2021

M.Siraj Afridi PS

Senior Puisne Judge

SB of Mr. Justice Rooh ul Amin Khan Hon’ble Senior Puisne Judge