

2016 P Cr. L J 1315

[Islamabad]

*Before Aamer Farooq and
Miangul Hassan Aurangzeb, JJ*

MUHAMMAD SHAFIQUE---Petitioner

versus

The STATE---Respondent

Criminal Miscellaneous No.100-B of 2016, decided on 14th March.
2016.

Criminal Procedure Code (V of 1898)---

---S. 497---Control of Narcotic Substances Act (XXV of 1997), Ss. 9(a) & 9(c)---Control of Narcotic Substances (Government Analysts) Ru. 2001, R. 4(2)---Possession, import and export, trafficking or financial trafficking of narcotic drugs, etc.---Bail, grant of---Delay in sending samples of narcotics for chemical analysis---Quantity of recovered narcotics falling under borderline cases---Samples of the recovered contraband substances had been sent for chemical analysis with delay of seven days---Lapse on part of the police in sending the contraband substance for chemical analysis within the stipulated period, had made the case of the accused that of further inquiry---Quantity of narcotic substances allegedly recovered from the accused exceeded the borderline case falling between the offence under Ss. 9(b) & 9(c) of Control of Narcotic Substances, Act, 1997---All prosecution witnesses were police officials; hence, there was no chance of the accused tampering with the evidence---Accused had been behind bars for four and half months, and no prosecution witnesses had been examined so far--- Bail application was allowed accordingly. [pp. 1318, 1319] A, B, C & D

Inayat Ullah v. The State 2006 PCr.LJ 840; Dilla Baz Khan v. The State 2008 PCr.LJ 1437; Ghulam Abbas v. The State 2011 YLR 1723; Asif Ali v. The State 2013 YLR 1241 and Sherin Muhammad v. The State 2006 PCr.LJ 726 rel.

Mahboob Ali v. The State 2007 YLR 2968 ref.

Wazir v. The State 2003 YLR 1163; Waris Ali v. The State 2006 PCr.LJ 1745; Hanook Babar Masih v. The State 2007 YLR 3105; Muhammad Javed v. The State 2009 PCr.LJ 1427 and The State v. Abul Ghanni 2010 SCMR 61 distinguished.

Muhammad Saleem Khan Baloch for Petitioner.

Ms. Hadia Aziz, State Counsel with Abdul Sattar, S.I. for the State.

ORDER

Through the instant bail petition, the petitioner, Muhammad Shafique, seeks post-arrest bail in case FIR No.391, dated 05.11.2015, under Section 9(c) of Control of Narcotic Substances Act, 1997, (hereinafter referred to as "CNSA") registered at Police Station Ramna, Islamabad.

2. The case of the prosecution is that on the information of the informer that the petitioner, who was a well-know drug trafficker, was seen going towards F-11 Islamabad in a taxi bearing registration No. LOD-3543, and that if the petitioner was searched, contraband substance was likely to be recovered from him; that at about 12:30 P.M. vehicle carrying the petitioner was stopped by the police party; that the petitioner tried to escape but fell to the ground on the pavement; that after being caught he identified himself as Muhammad Shafiq son of Ghulam Safdar, resident of Mohallah Dhoke Kashmirian, Sector G-12, Islamabad; that on searching the petitioner, a packet wrapped in packing tape was recovered from the petitioner and upon opening it charas weighing 1150 grams was found; that additionally a plastic bag containing heroin weighing 250 grams was also recovered from the petitioner; that 10 grams from the recovered charas and 10 grams from the recovered heroin, were sent separately as samples for chemical analysis. The result of the chemical examination was positive.

3. The petitioner applied for bail after arrest before Additional Sessions Judge, Islamabad, which was dismissed, vide order dated 15.12.2015.

4. Learned counsel for the petitioner, *inter alia*, submitted that under Rule 4(2) of the Control of Narcotic Substances (Government Analysts) Rules, 2001, the samples of the recovered contraband substance are required to be sent to the chemical analyst within 72 hours of the recovery, whereas in the instant case there was a delay of seven days; that there is no document showing that the samples were received for chemical examination within the period stipulated by the law; and that this was a borderline case between section 9(c) and Section 9(b) of the CNSA, 1997, and therefore, the petitioner was entitled to the concession of bail. It was further submitted that the petitioner had been arrested on 05.11.2015 and had already remained behind bars for more than four months and ten days. He buttressed his submissions by relying on the case of Inayat Ullah v. The State reported as 2006 PCr.LJ 840,

Mahboob Ali v. The State reported as 2007 YLR 2968, Dila Baz Khan v. The State reported as 2008 PCr.LJ 1437, Ghulam Abbas v. The State reported as 2011 YLR 1723.

5. On the other hand, learned State Counsel, after consulting the Investigation Officer, candidly admitted that samples of the narcotic substance recovered from the petitioner were sent with a delay of seven days for chemical analysis. However, she submitted that the recovered substance was not a perishable commodity and that the said delay had no adverse bearing on the case; that the challan had been submitted on 03.12.2015, and the charge had been framed on 18.01.2016; and that the prosecution witnesses were five police officials. It was further submitted that the petitioner had a criminal record and was on bail in a number of cases including FIR bearing Nos. 181/2012, 182/2015 and 199/2015, all registered at Police Station Ramna. She further submitted that the offence committed by the petitioner came within the prohibitory clause of section 497, Cr.P.C. In making her submissions, the learned State Counsel relied on the cases titled as Wazir v. The State reported as 2003 YLR 1163, Waris Ali v. The State reported as 2006 PCr.LJ 1745, Hanook Babar Mashir v. The State reported as 2007 YLR 3105, Muhammad Javed v. The State reported as 2009 PCr.LJ 1427 and The State v. Abul Ghanni reported as 2010 SCMR 61.

6. We have heard the arguments of learned counsel for the parties and perused the record with their able assistance.

7. The case law relied upon by the learned State counsel does not come to her aid. In the case of The State v. Abul Ghanni reported as 2010 SCMR 61, 2.610 kilograms of heroin and 1.780 kilograms charas was recovered from the accused. This quantity of contraband substance was far in excess of the quantity involved in the case at hand. In the case of Muhammad Javed v. The State reported as 2009 PCr.LJ 1427, 11 cases including 5 cases involving narcotics had been registered against the accused; three sons of the accused were respectively involved in 20, 3 and 6 cases; two brothers in law of the accused were also involved in 10 and 3 cases respectively, most of which were under the CNSA, therefore, the accused was held not to be entitled to the concession of bail. In the case of Wazir v. The State reported as 2003 YLR 1163, the accused was caught with two kilograms of charas and five kilograms of bhang, therefore, his case clearly fell under section 9(c) of the CNSA, and he was not granted bail. In the case of Hanook Babar Masih v. The State reported as 2007 YLR 3105, 1025 grams of charas had been recovered from the accused and he was held not to be entitled to the concession of bail. In the case of Waris Ali v. The State reported as 2006 PCr.LJ 1745, an accused from whom one kilogram of charas was recovered was held not to be entitled to the grant of bail.

8. Rule 4(2) of the Narcotic Substances (Government Analysts) Rules, 2001 reads as follows:

"(2) Samples may be dispatched for analysis under the cover of a Test Memorandum specified in Form-I at the earliest, but not later than seventy-two hours of the seizure. The envelope should be sealed and marked "Secret Drug Sample/Test Memorandum"."

9. As mentioned above it is an admitted position that the samples of the contraband substance recovered from the petitioner were sent for chemical analysis with a delay of seven days. The learned State Counsel has not come up with a single authority, wherein delay beyond the period stipulated in Rule 4(2) of the Control of Narcotic Substances (Government Analysts) Rules, 2001, had existed and the accused was denied bail. The admitted lapse on the part of the police/prosecution to have sent the allegedly recovered contraband substance for chemical analysis within the period of stipulated under the law made the case against the accused that of further inquiry. In the case of Inayat Ullah v. The State reported as 2006 PCr.LJ 840, there had been a delay of about 15 days from the date of the registration of the case, in sending the recovered sample of the contraband substance for chemical analysis to a laboratory. The accused was held to be entitled to the concession of bail. In the case of Asif Ali v. The State, reported as 2013 YLR 1241, 1250 grams of *charas* was allegedly recovered from the accused, and there had been a delay of six days from the date of the registration of the case in sending the contra-band material for chemical examination. It was held that it was to be determined during the trial whether the offence fell under sections 9(b) and 9(c) of the CNSA, the accused was admitted to bail in the circumstances.

10. Now in the case of Ghulam Abbas v. The State reported as 2011 YLR 1723, bail was granted to accused from whom 1100 grams of *charas* was recovered. It was held that the total quantity of the alleged *charas* being 1100 grams, marginally exceeded the borderline falling between the offence under sections 9(b) and 9 (c) of the CNSA, 1997; in the case of Ali Akbar v. The State, reported as 2010 YLR 127, bail was granted to the accused because the quantity of the alleged recovered *charas* marginally exceeded 1000 grams. It was held to be a case borderline case between clauses (b) and (c) of the CSNA, 1997, where maximum punishment could not be awarded; in the case of Sherin Muhammad v. The State, reported as 2006 PCr.LJ 726, bail was granted to accused from whose house *charas* weighing 1130 grams had been recovered during a raid. It was considered to be a borderline case and a point of discussion and further inquiry to determine the guilt of the accused; and in the case of Dila Baz Khan v. The State, reported as 2008 PCr.LJ

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1437, bail was granted to an accused from whom 1675 grams of *charas* was recovered. It was held to be a borderline case between clauses (b) and (c) of the CSNA, 1997. All these cases come to the aid of the petitioner. B

11. Furthermore, as all the prosecution witnesses are stated to be police officials, there is no chance of the accused tampering with the evidence. He has already spent four and a half months behind bars and the prosecution witnesses have not been examined. C

12. In view of the aforementioned, we are inclined to admit the petitioner to bail subject to his furnishing bail bonds in the sum of Rs.100,000 with two sureties in the like amount to the satisfaction of the learned Trial Court. Before parting with this order we would like to add that the observations made hereinabove are tentative in nature and shall not influence the course of the trial in any manner. D

Bail allowed.

SL/56/IsI.
