

Judgment Sheet

**IN THE PESHAWAR HIGH COURT,
PESHAWAR**

(Judicial Department)

BA No. 123-P of 2018

**Shoaib
Versus
The State
ORDER**

Date of hearing. **28.02.2018**

Petitioner by: Ms. Farhana Naz Marwat, advocate.

State by: Mr. Muhammad Sohail, AAG.

QAISER RASHID KHAN, J. The accused/
petitioner, Shoaib , seeks bail in case FIR No. 837
dated 23.11.2017 registered under sections 9 (c),
Control of Narcotic Substances Act,1997, Police
Station Gulbahar, District Peshawar, with the
allegations that 12000 grams charas were recovered
from a plastic sack carried by him.

2. Arguments heard and the available record
perused.

3. All that the learned counsel for the
petitioner vehemently contends is that the
accused/petitioner has been falsely charged in the
instant case and more so that as per the FIR he was

allegedly found to be carrying 12 kgs of charas 'garda' however the FSL report shows the same to be 'brown solid' and hence keeping in view such contradiction, the matter obviously leads to one of further inquiry. The learned counsel placed reliance on the judgment of the august apex court in Criminal Appeal No. 14-P of 2015 titled "*Muhammad Mustafa versus the State*" decided on 06.05.2015.

The learned AAG, on his turn, opposes the bail petition of the accused/petitioner on the ground that huge quantity of narcotics has been recovered from his possession and thus disentitling him to the concession of bail.

4. As per the FIR, it was during patrol duty and on receipt of a spy information that a person would be smuggling huge quantity of charas from the tribal territory to Punjab through Lahore Bus Terminal, Peshawar, when a nakabandi was laid by the local police and on the arrival of the accused/petitioner carrying a plastic sack, on the pointation of the spy, was overpowered who disclosed his name to be Shoaib and from the plastic sack, 12 packets of charas each weighing 1000 grams were recovered and from each

packet, 5 grams were separated for the purpose of sending the same to FSL for chemical analysis.

5. The argument of the learned counsel for the petitioner that whereas in the FIR charas garda has been mentioned but the FSL report shows the same as 'solid brown' cannot be looked into at this bail stage.

Of late, an impression is being imparted that 'garda' as the word connotes means something to be in powder or particle form. However, the same is not true in the case of charas. Charas 'garda' for all practical purposes is in semi solid raw form and after going through some baking process, it turns into charas pukhta and that is how the FSL report not only in this case but in other cases as well show 'charas garda' as 'brown solid'. In the case of charas, be that charas garda or charas pukhta, it is only after undergoing *Duquenois* test and *Thinlayer Chromatography (TLC)* when the nature of the contraband item is affirmed. In this case too, both the tests are in the affirmative.

6. Given the recovery of huge quantity of charas weighing 12 kgs from the personal possession of the petitioner and the FSL report in respect of the

contraband charas being in the affirmative, the accused/petitioner is prima facie connected with the commission of the offence which squarely falls within the prohibitory clause of section 497(1) Cr.P.C and thus I hold him disentitled to bail. Accordingly, this bail petition stands dismissed.

Before parting with this order, it is directed that any observations recorded in this order are keeping in view the arguments advanced by the learned counsel for the petitioner and are thus purely tentative in nature and shall accordingly in no way prejudice the proceedings before the learned trial Court where the case be decided on its own merits after recording evidence.

Announced:
28.02.2018

J U D G E

younas

Justice Oaiser Rashid Khan (SB)