

**JUDGMENT SHEET**  
**PESHAWAR HIGH COURT, PESHAWAR**  
**JUDICIAL DEPARTMENT**

**Cr.Misc.B.A.No.926-P/2017**

**JUDGMENT**

Date of hearing.....19.06.2017.....

Petitioner: (Khaista Gul) by Mr. Alam Sher Khan,  
Advocate.

Respondent :( State) by Mr. Moeen-ud-Din Humayun, AAG.

**SHAKEEL AHMAD, J.-** Through the instant petition, the accused/petitioner is seeking post arrest bail in case FIR No.304 dated 14.04.2017 under sections 419/420/268/471/34 PPC r/w 3/4 Prohibition (Enforcement of Hadd) Order and Section 14 Foreigners Act, of Police Station Gulbahar, District Peshawar.

2. The prosecution case as set forth in the crime report is that, during gasht, Zahid Khan ASI received a spy information that accused-petitioner Khaista Gul has prepared a forged CNIC in the name of Islam Gul, and with the help of accused Liaqat Ali son of Gul Muhammad resident of Village Rashid Gari would attempt to transport liquor and for this purpose he is present at Afridi bridge with Tapka (gallon) containing liquor. On the receipt of this

information the complainant alongwith other police officials went to the spot, apprehended the accused/petitioner and recovered four Tapkay containing 120 liquor litters. On his personal search a forged (as alleged) coloured photo copy of CNIC bearing No.17301-1291899-7 in the name of Islam Gul son of Shehbaz Khan was recovered from his front pocket. On cursory interrogation the accused disclosed that the contraband is jointly owned by him and co-accused Liaqat Ali. The accused was taken into custody on the spot.

3. The learned counsel for the accused/petitioner sought bail on the following grounds;

- i. That sections 419/420/468/471 PPC and 14 Foreigners Act are not applicable under the attending circumstances of the case.
- ii. His second contention was that section 419/420/468/471 and article 3/4 P.O are not hit by the restrictive clause of section 497 Cr.P.C.
- iii. Thirdly that the accused/petitioner is not a previous convict and is no longer required for the purpose of investigation.
- iv. That the FSL report of the sample of contraband/liquor is not available on the record.

4. The learned AAG appearing on behalf of the State vehemently opposed the contention of the learned counsel for the petitioner and argued that huge quantity of contraband/liquor was recovered from the possession of the accused/petitioner, therefore he is not entitled for bail.

5. I have given my anxious consideration to the arguments advanced by the learned counsel for the accused/petitioner and State.

6. Perusal of record reveals that the Investigation Officer has neither obtained FSL report in respect of the contraband liquor nor verified the CNIC in question from NADRA to ascertain its genuineness or otherwise. During arguments the learned counsel for the accused/petitioner produced original CNIC of the brother of the accused, namely, Islam Gul for perusal of the Court, copy whereof is already appended with the bail application. Scanning of record further reveals that name of the father of the accused/petitioner and Islam Gul are one and the same. So far as Section 14 Foreigners Act is concerned, the evidence against the accused is still to be evaluated and it is yet to be seen as to whether it is applicable under the attending circumstances of the case or not. The learned counsel for the petitioner

drew my attention to a decision of a Hon'ble Supreme Court of Pakistan in case of "Haji Wali Muhammad vs. The State" reported in 1969 SCMR-233. The Supreme Court held as under:-

*"As a general rule on a charge of the kind made in this case not invoking a sentence of death or transportation for life, bail should ordinarily be allowed disregarding the grounds of the seriousness or anti-social nature of the offence, unless there are strong grounds, in the shape of evidence for the belief that he is guilty".*

7. The learned counsel for the petitioner also placed reliance on PLD 1988 Karachi-64, wherein the accused was charged under section 14-Foreigners Order, 1951, Article 3(a) he was allowed bail. Reliance can well be made on MLD 2017 Page 259, wherein it was held that bail cannot be denied to the accused, when it is a well settled Principle of law that bail cannot be withheld as conviction in advance. The rest of the sections do not fall within the prohibition contained in Section 497 Cr.P.C. Moreover, the accused/petitioner is neither required for the purpose of investigation nor he is previous convict. Therefore, I am of the opinion that the reasonable grounds do exist for believing that the

matter requires further probe into the guilt of the accused/petitioner.

8. In view of above, this petition is accepted and the accused/petitioner is admitted to bail provided he furnishes bail bonds to the tune of Rs.2,00,000/- (Rupees two lac) with two sureties each in the like amount to the satisfaction of the learned Illaqa/Judicial Magistrate, who shall ensure that the sureties must be local, reliable and men of means.

**Announced.**  
**Dt.19-06-2017.**

**J U D G E**

**M.Iqbal**