

**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, PESHAWAR.
JUDICIAL DEPARTMENT**

Cr. M BA No.1898-P of 2018.

JUDGMENT.

Date of hearing 8th October, 2018.

Tahir Khan & another.....Vs.....The State.

Petitioner(s) by Mr. Muhammad Saleem Shakir, advocate.

State by Mr. Rab Nawaz Khan, Additional Advocate General.

WAQAR AHMAD SETH, CJ: - Accused-petitioners,

Tahir Khan & Rustom Khan sons of Badi uz Zaman,

charged in case vide FIR No. 745 dated 04.09.2018, under

section 9-C CNSA, registered in Police Station Shaheed

Gulfat Hussain, Peshawar, have approached this Court for

their release on bail, which was refused to them by learned

Judge Special Court-IV/Additional Sessions Judge-IV,

Peshawar, vide order dated 13.09.2018.

2. As per contents of FIR, the case of prosecution

is that, complainant Sheriyar Khan, SI on spy information,

made barricade on the place of occurrence and as per

information, the vehicle bearing registration No. LE-4909,

Lahore, Silver Colour, coming from GT road, on seeing the police party, diverted, however, overpowered by the complainant party and on cursory investigation, driver disclosed his name as Tahir Khan while another sitting on front seat disclosed his name as Rustom Khan, brother interse. On search of the vehicle, from beneath of both the front seat, 2/2 KG charas were recovered, wherefrom five grams were separated for chemical analysis and the instant FIR was lodged.

3. I have heard learned counsel for the accused-petitioner, learned AAG for the State and available record gone through.

4. Perusal of available record would depict that both the accused-petitioners have been arrested by the complainant party on the allegations of having contraband, allegedly to be smuggled to Peshawar, but neither the nature of contraband either Garda or Pukhta charas was mentioned in the FIR, nor their destination and nor their alleged place of communication fromwhere the charas was dispatched, has been brought on record. Furthermore, nothing was brought


on record in respect of the seized vehicle, whether it was in the name of accused-party or otherwise nor previous history of accused-petitioners has been brought on record to show their involvement in such like activities. Since their arrest, accused-petitioners have been investigated / interrogated but neither any further recovery has been made nor they confessed their guilt. Moreover, a mistaken relief of bail may be repaired by convicting the accused, if proved guilty, but no proper reparation can be offered for his unjustified incarceration, albeit, his acquittal in the long run. Reliance is placed on the case of **Zaigham Ashraf versus the State and others, reported in 2016 SCMR-18**. Investigation is complete and they are no more required to the prosecution, hence keeping them behinds the bars for indefinite period would serve no useful purpose, when their case falls within the subsection-2 of section 497 Cr.PC, entitling them to the concession of bail.

5. From the tentative assessment of record petitioner has made out a case arguable for the purpose of bail, resultantly the same is allowed and accused-petitioners

be released on bail, provided they furnish bail bonds to the tune of Rs. 4, 00,000/- with two sureties each in the like amount to the satisfaction of learned trial Court, who shall ensure that the sureties are local, reliable and men of means.

7. These are the reasons of my short order of even date.

Announced:
08.10.2018.


Chief Justice