

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

Cr.Misc/BA No. 1085-P/2017

JUDGMENT

Date of hearing: 19.6.2017.

Petitioner: (Hassan Shah) by Mr. Amjad Noor Khan, Advocate.

Respondent: (The State) by Syed Qaiser Ali Shah, AAG.

WAQAR AHMAD SETH, J.- Accused-petitioner

Hassan Shah son of Hazrat Shah, seeks bail in case FIR No. 1388 dated 17.11.2014 under Section 9(c) Control of Narcotic Substances Act, 1997 registered at Police Station Hayatabad, Peshawar on statutory ground of delay in conclusion of trial.

2. Charge against the accused-petitioner is that he while driving a motorcar and accompanied by one Fazal Karim was intercepted by the police and from the secret cavities made in the vehicle, nine (09) Kgs heroin were recovered; hence, the instant F.I.R.

3. Arguments heard and record perused.

4. Perusal of the record would reveal that earlier bail application of the accused-petitioner was dismissed

by this Court on merits vide order dated 8.1.2015 and thereafter, he filed another bail application before this Court on statutory ground, which too, was dismissed vide order dated 6.5.2016 with direction to the learned trial Court to conclude trial in the case within three months positively but the learned trial Court has failed to comply with the above said directions. In the instant case, challan was submitted against the accused-petitioner on 18.3.2015 and charge was framed against him on 27.5.2015 and since then till date only two PWs have been examined. If the learned trial Court is to proceed with the trial with such a speed, the same would not conclude in near future and the accused-petitioner cannot be detained in jail for indefinite period.

5. In the case of *Jadeed Gul vs. The State (1998 SCMR 1124)*, the Hon'ble Apex Court has held that:-

“S. 497—Penal Code (XLV of 1860), 5.274/275/276/420/483/482/485/487/467/468 /471---Drugs Act (XXXI of 1976), S. 23/27—Bail, grant of ---Trial of accused had not been concluded within two months despite direction of Supreme Court as Drug Court was not functioning due to non-availability of the Presiding Officer--- Prosecution was unable to give time within

*which trial was likely to be concluded—
Case of accused did not fall under the
prohibitory clause of S. 497(1), Cr.P.C. ---
Accused was admitted to bail in
circumstances”.*

Similarly, in the case of Muhammad Aslam vs.

The State (1999 SCMR 1092), the Hon’ble Apex Court

has held that:-

*“S. 497---Penal Cod (XLV of 1860), S.
302/324/148/149—Bail—Despite direction
of High Court trial against accused had not
been completed by the Trial Court within
the specified period—Prosecution was
unable to give any explanation for non-
compliance of the said order of High
Court—Petition for leave to appeal was
converted into appeal which was allowed
and the accused was admitted to bail in
circumstances”.*

Likewise, in the case of Himesh Khan vs. The

National Accountability Bureau (NAB), Lahore and

others (2015 SCMR 1092), the Hon’ble Apex Court has

held that:-

*“Speedy trial was the alienable right of
every person, therefore, even if the
provision of S. 497, Cr.P.C. in ordinary
course was not applicable to an accused
person facing charges under National
Accountability Ordinance, 1999, the
boarder principle of the same could be
pressed into service in hardship cases to
provide relief to a deserving accused person
incarcerated in jail for a shockingly long
period”.*

6. Petitioner is behind the bars for the last 29/30 months and his trial could not be concluded despite issuance of direction by this Court, therefore, this Court is left with no option but to release him on bail.

7. In view of the above, this bail application is accepted and the accused-petitioner is admitted to bail provided he furnishes bail bond in the sum of Rs. 10,00,000/- (Rs. Ten lacs) 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.

8. Above are the reasons of my short order of even date.

Announced.
19.6.2017

J U D G E

Nawab Shah