

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

W.P No.5186-P/2018

JUDGMENT

Date of hearing.....15.01.2019.....

Petitioner: (Shakeel Khan) By Mr. Noor Alam Khan, Advocate.

Respondents: (The State etc) By Syed Sikandar Hayat Shah, AAG.

QALANDAR ALI KHAN, J.- Shakeel Khan, petitioner, invoked the writ jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, read with Section 561 Cr.P.C for quashment of the order dated 18.10.2018 of learned Additional Sessions Judge-II, Nowshera, whereby earlier order dated 09.10.2018 of the said Court was reviewed/cancelled/recalled.

2. The petitioner was on the driving seat of Carry Van No.AFV-266/ICT, wherefrom heroin weighing 10300 grams was recovered and the petitioner alongwith co-accused occupying the front seat, namely, Muhammad Ishaq son of Yar Muhammad and Abdul Ghani son of Sharbat Khan present on the rear seat, all residents of Jamrud, Khyber Agency, were arrested and booked by the local police of Police Station Akbar Pura, Nowshera, vide

FIR No.189 dated 10.08.2018 under section 9 (c) CNSA. The co-accused, namely, Abdul Ghani and Muhammad Ishaq were granted bail by this Court vide order dated 28.09.2018; and following the bail granting order of this Court, the learned Additional Sessions Judge-II/Judge Special Court, Nowshera, also granted bail to the petitioner vide order dated 09.10.2018; which was reviewed/cancelled/recalled by the same Court vide the impugned order dated 18.10.2018, primarily, on the ground that after bail order in favour of the petitioner, FSL report was received, reporting tampering of chassis number of the vehicle, besides making further observations with regard to direct charge against the petitioner 'who was found on the driving seat of the vehicle', wherefrom huge quantity of contraband was recovered which could not be considered as without knowledge of the person occupying driving seat of the vehicle, and further that report of the laboratory was also received in positive.

3. Arguments of learned counsel for the petitioner and learned AAG heard; and record perused.

4. It may be observed, at the very outset, that instead of moving this Court for cancellation of bail granted by the learned Additional Sessions Judge to the petitioner involved as a driver of the vehicle

wherefrom huge quantity of heroin weighing 10300 grams was recovered, the State, through the Deputy Public Prosecutor, Nowshera, preferred to move bail cancellation application to the same Court, which opted to cancel bail granted to the petitioner on the ground that after bail order in favour of the petitioner, FSL report was received showing chassis number of the vehicle tampered; while totally overlooking this fact that bail was granted to the petitioner/accused under section 9 (c) CNSA, which could not be cancelled/recalled/reviewed on the said ground of tampering of chassis number of the vehicle in the light of FSL report; where-under neither the accused was yet arrested or granted bail by the forum below so as to justify cancellation of bail there-under by the Additional Sessions Judge. In addition to the FSL report showing chassis number of the vehicle tampered with forming basis for cancellation of bail, the learned Additional Sessions Judge also pointed out in the impugned order that the petitioner was driving a vehicle, containing huge quantity of contraband, who, while occupying driving seat of the vehicle could not be deemed to have had no knowledge of the contraband in the vehicle and that report about samples of contraband sent to the laboratory was also received in positive. Such order, among other things, would

suggest afterthought and late realization on the part of the prosecution as well as the learned Additional Sessions Judge-II, Nowshera, that a driver of the vehicle wherefrom huge quantity of heroin weighing 10300 grams was recovered, was released on bail vide earlier order of the same Court dated 09.10.2018. Therefore, in an apparent effort to camouflage the earlier bail order, the bail was cancelled/recalled/reviewed on the pretext of FSL report showing chassis number of the vehicle tampered with; which is not sustainable; and ought to be set at naught for being contrary to the legal provision governing cancellation of bail; but, with the observation that if the prosecution was so keen to get the bail cancelled, it could and should move the higher forum i.e. the High Court for the purpose, instead of adopting a course which was not provided for in the circumstances of the case.

5. Consequently, while taking serious notice of the unwarranted deviation from the proper legal course of correcting a wrong; and, also leaving open option of moving for cancellation of bail granted to the petitioner, the instant petition is accepted to the extent of cancellation of bail by the learned Additional Sessions Judge-II, Nowshera, vide impugned order dated 18.10.2018 on the ground of FSL report showing

chassis number of the vehicle tampered with. Needless to say that this order shall have no bearing on merits of the fresh bail cancellation application by the prosecution before the proper forum, alluded to hereinabove.

Announced
15.01.2019

SENIOR PUISNE JUDGE

J U D G E

*(D.B) Hon'ble Mr. Justice Qaiser Rashid Khan.
Hon'ble Mr. Justice Qalandar Ali Khan.*

(M. Iqbal)