

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

Cr.M/BA No. 2638-P/2017

JUDGMENT

Date of hearing: 18.12.2017

Petitioner: (Muhammad Idress) by Mr. Noor Alam Khan, Advocate.

Respondent: (The State) by :- No. 120/2017/2017 when AAU.

WAQAR AHMAD SETH, J.- Petitioner, Idress son of Sifat Khan, having been involved in case FIR No. 1461 dated 17.10.2015 under Sections 9(c) Control of Narcotic Substances Act, 1997 registered at Hayatabad, Peshawar was refused bail on statutory ground i.e. non-conclusion of trial by the learned Additional Sessions Judge-VIII/Judge Special Court, Peshawar vide order dated 16.11.2017. Now, he has approached this Court for the same purpose.

2. As per contents of F.I.R. on 17.10.2015, the local police of PS Hayatabad, Peshawar, on spy information, made nakabandi at the place of occurrence, when in the meanwhile, motorcar/Alto bearing registration No. AB-4714/Karachi coming from tribal territory was overpowered. The driver disclosed his name as Muhammad Idress. On search of vehicle, 15 packets charas garda weighing 15 Kgs were recovered from its secret cavities made in the petrol tank, out of which, 5/5 grams from each packet were separated for analysis through FSL and the remaining stuff

was separately sealed in a parcel. The accused was arrested on the spot and a case under the above section of law was registered against him.

3. Arguments heard and record perused.

4. On merit, the petitioner was refused bail upto this Court and now he seeks bail on statutory ground i.e. non-conclusion of trial, therefore, merits of the case need not to be discussed. In the instant case, complete challan was submitted in Court on 20.4.2016 and the case was entrusted to learned Additional Sessions Judge-VIII, Peshawar for disposal, who summoned the accused through Zamima Bay for 2.5.2016, on which date, compliance of section 265-C Cr.P.C. was made and the case was posted to 7.5.2016 for framing of charge. On 7.5.2016, charge was framed against the petitioner, to which, he did not plead guilty and claimed trial, thus, PWs along with case property was summoned for 20.5.2016 and since then till 4.12.2017 only four (04) PWs have been examined and one PW Sheraz has been abandoned; thus, after lapse of more than one and a half years, trial of petitioner could not be concluded, inspite of the fact, that no delay has attributed to the petitioner except on two occasions, whose counsel was not available. Petitioner is behind the bars since 17.10.2015 and if the learned trial Court shall proceed with the trial with such a pace, it would

not conclude in near future; hence, the petitioner has made out a case for bail on statutory delay.

5. Recently, in Imtiaz Ahmed's case (2017 SCMR 1194), the Hon'ble Apex Court has been held that:-

“S. 46—Right to speedy trial—Scope—Trial before Special Court constituted under the Control of Narcotic Substances Act, 1997—To have a speedy trial, was the Fundamental Right of accused—Said principle applied more vigorously to the trials before Special Courts, such as the courts constituted under the Control of Narcotic Substances Act, 1997—Any unreasonable delay in the conclusion of the trial, before Special Courts, would amount to denial of justice”.

6. Similarly, in Adnan Prince's case (PLD 2017 Supreme Court 147), the Hon'ble Apex Court has been held that:

“S. 497—Penal Code (XLV of 1860), Ss. 295-A, 295-B & 295-C—Maliciously insulting the religion or the religious beliefs of any class, defiling etc. of copy of Holy Quran, using of derogatory remarks etc. in respect of the Holy Prophet—Bail, grant of—Scope—Delay of more than two years in conclusion of trial—Record showed that three years and three months had passed since arrest of accused—Delay in conclusion of trial had mainly been caused by the prosecution or the court itself—Even if the adjournments sought by the accused due to absence of his counsel or his non-availability were excluded, his total detention during the trial was more than two years—Despite lapse of three, years and three months examination-in-chief of only a single witness had been recorded during trial—Speedy trial was the right of every accused person, therefore,

unnecessary delay in trial of such cases would amount to denial of justice--- Accused had made out a case for grant of bail due to inordinate delay in conclusion of his trial---Accused was granted bail accordingly”.

7. Thus, in view of the facts and circumstances of the case and while relying on the aforesaid judgments of the Hon’ble Apex Court, I accept this bail application and admit the accused-petitioner on bail provided he furnishes bail bond in the sum of Rs. 400,000/- (Rs. Four 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.


J U D G E

Announced.
18.12.2017