

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

**Cr.M.BA No.2658-P/2019**  
**“Saif-Ullah Vs. The State”**

Date of hearing     **27.09.2019**

Petitioner(s) by:     **Mr. Abid Ayub,**  
  **Advocate.**

Respondent(s) by: **Ms. Saman Shahzad,**  
  **Advocate/Standing**  
  **Counsel for State.**

**JUDGMENT**

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**AHMAD ALI, J.** Saifullah s/o Saif-ul-Malook, accused-petitioner, seeks his post arrest bail in case FIR No.361 dated 24.04.2019 for offence under Section 9 (C) CNSA, registered at Police Station Khazana, District Peshawar.

2. Brief facts of the case, as per contents of the FIR, are that on spy information regarding smuggling of charas to Punjab through a Hiace/Flying Coach, the local police of police station Khazana made nakabandi at Northern Bypass near Charsadda Road, Peshawar. In the meanwhile, a passenger Hiace/Flying Coach, which was going from Peshawar to Punjab was stopped and the passengers were checked. On search a passenger who was seated in back

seat, having black shopping bag in his hand, 04-Kg of charas pukhta were recovered. 5/5 grams charas were separated for the purpose of FSL analysis and rest of contraband were sealed in a separate parcel. On query, the person from whose possession the contraband was recovered, disclosed his name as Saifullah s/o Saif-ul-Malook r/o Khazana Payan. Accordingly, he was arrested and the said FIR was lodged.

3. Accused-petitioner approached the Court of learned Additional Sessions Judge-V, Peshawar for his release on bail but his bail application was dismissed vide order dated 09.07.2019. Hence, the instant Bail Petition.

4. Arguments of the learned counsel for the parties heard and record perused with their valuable assistance.

5. Allegation against the petitioner is that he was apprehended by the local police while having 4000 grams charas in his possession. In this regard, wisdom could be gain from the judgment reported in 2012 P.Cr.L.J 1901, wherein it was held;

*“It is settled law that the quantum of sentence has to be commensurate with the quantum of substance recovered, hence this court*

*doubts the petitioner can be awarded maximum sentence for possessing 4 Kgs. of charas. Needless to say that the court while hearing the petition for bail is not supposed to keep in mind the maximum sentence provided by the Statute but the one, which is likely to be entailed by the facts and circumstances of the case, especially, when the ultimate conviction, if any, can repair the wrong caused by the mistaken relief of bail.”*

6. So, in the given circumstances and while taking guidance from the judgment (supra), in the instant case the quantum of sentence is to be determined by the learned trial Court, after recording of evidence. It is the consistent view of this Court that for the purpose of bail in such like offences the quantity of contraband and the expected quantum of punishment to be awarded at the trial has to be taken into account while allowing bail to the accused persons. Reliance could be safely placed on **2013 MLD 1703.**

7. Being a case of prior information, whole the proceedings were conducted by an ASI which is violative of the governing provisions of the law on the subject. The Samples separated for FSL were sent to the laboratory after delay of 6 days, which also makes the case of prosecution to be doubtful coupled with the fact that no independent witness was

associated with the recovery of contraband. Besides, no statement of the driver or cleaner was recorded by the IO.

8. Moreover, the accused-petitioner is juvenile as he has placed on record his school leaving certificate in original, which shows his date of birth to be 23.03.2002 i.e. less than 18 years. Investigation in the case is complete and the accused-petitioner is no more required to the prosecution.

6. Before parting with the judgment, this Court finds it necessary that the observations rendered by the High Court while disposing bail applications are not to be considered during the trial of the accused. In this regard the august Supreme Court of Pakistan in **Shuaib Mehmood Butt Vs. Iftekharul Haq (1996 SCMR 1845)** has rendered clear guidance, which is to the effect that:-

*“However we would like to point out in no certain terms that the observations made by the High Court in the orders granting bail and by us in this order are confined to tentative assessment made for the purpose of disposal of bail applications and not intended to influence the mind of the trial Court, which is free to appraise the evidence strictly according to its merits and the law of the time of disposal of the case, which of course it is needless to say, is the function of the trial Court”.*

7. Thus, taking tentative assessment of the available record, case of the accused-petitioner squarely falls under sub-section (2) of section 497 Cr.P.C. call for further probe into the matter.

8. Consequently, this petition is allowed and the accused-petitioner Saifullah is admitted to bail, provided he furnishes bail bonds in the sum of Rs.100,000/- (one lac) with two sureties each in the like amount to the satisfaction of Illaqa/Duty Judicial Magistrate.

9. Above are the detailed reasons of short order of even date.

**J U D G E**

**Announced on;**  
**27.09.2019.**