

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, PESHAWAR
(Judicial Department)

Cr.M.(B.A) No.2470-P/2022.

Bilal
Vs.
The State.

JUDGMENT

For Petitioner: Ms. Farhana Naz Marwat, Advocate.

For State: Mr. Mohammad Riaz Khan, AAG.

Date of hearing: 31.8.2022.

MUHAMMAD FAHEEM WALI, J.- Being booked in case FIR No.219 dated 05.7.2022, under Sections 11(b) of CNS Act, registered at police station, Ghazni Khel, District Lakki Marwat, accused/petitioner Bilal @ Khan Jee son of Shoukat Ullah seeks his release on post arrest bail, as he has been declined bail by the Court of learned Additional Sessions Judge-II, Lakki Marwat, vide order dated 23.7.2022.

2. The allegations against the accused/petitioner, as per FIR, registered on the basis of murasila, are that on 05.7.2022 at 13:20 hours, he was apprehended from his Baithak, situated in village Tajazai and from his personal possession 710 gram amphetamine/Ice was recovered.

3. Learned counsel for the petitioner vehemently argued that the petitioner is innocent and has

implicated in the present case; that there is no mention in the murasila regarding separation of samples allegedly recovered from the petitioner; that no lady constable was associated with the raid and that no search warrant as required under the law was obtained from the competent Court. She prayed for release of the accused/petitioner on bail.

On the contrary, it is argued that the petitioner has been apprehend red-handed and from his personal possession the recovery was effected. It was further argued that the police has no ill-will to falsely implicate the petitioner in the present case and police witnesses are as good witnesses as from the public. He lastly contended that the place of occurrence is Baithak of the petitioner, so no search warrant was required to be obtained from the Court.

4. Arguments heard and record scanned.

5. Scanning of the record reveals that as per allegation, the petitioner was arrested from his Baithak situated in village Tajazai and from his possession 710 gram amphetaminic/Ice was recovered. The law of Narcotic Control as enforced in the Khyber Pakhtunkhwa province holds a distinction between a public place and a private place and such a clarification can itself be gathered from conjoint reading of the sections of law enumerated in Chapter IV of the Khyber Pakhtunkhwa Narcotic Substances Act, 2019, and



also provide the procedure to be followed regarding different scenarios enumerated therein.


6. According to Section 27 of the Act, it has been left to the discretion of the Special Court to issue warrant either for arrest or search or both, to an authorized officer, regarding a person or search of a private entity that comprises building, place, premises, dwelling house or conveyance, if there are reasons to believe that some narcotics substances have been kept or concealed therein. However, there is a stipulation that in case of dwelling house, search shall be conducted in the company of lady constable and that too after affording an opportunity to the inhabitant ladies for observing Pardah to maintain dignity of the women and dwelling house.

7. In order to cover the eventuality of the accused taking steps to conceal the narcotics property or to make an escape, the law under Section 28 empowers an authorized officer to make search and arrest as aforesaid, without obtaining a warrant from the Special Court, if from his personal knowledge or upon the information received from another person he has reason to believe that any narcotic substance is kept or concealed in any building, place, premises, dwelling house or conveyance. The above cited authorization is subject to the condition that reasons and basis of his such information shall be recorded by the Authorized Officer, followed by taking immediate necessary action and



sending a copy thereof, forthwith to the Regional Director or the R.P.O. concerned.

8. Sections 29 and 30 provide more leverage to the Authorized Officer, by removing fetters of obtaining warrant of arrest and search or information to superior officers mentioned in preceding section, in case he makes arrest or seizure at a public place or a conveyance intended for transportation of any narcotics substance. Similarly, vide Section 31 of the *ibid* Act, compliance of Section 103, Cr.P.C. has been discarded except to the extent of search of dwelling house. Violation of Section 27 has been provided with a punishment of imprisonment which may extend to three years and fine in Section 32.



Bare perusal of above-cited manifestation of the provisions of the Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019, highlight that all these sections are in essence, 'pari materia' of the Control of Narcotic Substances Act, 1997, Chapter III, sections 20, 21, 22, 23, 25, 26, respectively, without any noticeable variation, in the form of addition or subtraction. therefore, the determination of whether these provisions are mandatory or directory has already been settled by the Apex Court through numerous pronouncements i.e. (1) "Fida Jan V. The State" (2001 SCMR 36; (2) "Muhammad Hanif V. The State" (2003 SCMR 1237); (3) "Muhammad Younas V. Mst.

Perveen" (2007 SCMR 393); (4) "The State Vs. Hemjoo" (2003 SCMR 881); (5) Arshad Mahmood V. The State" (PLD 2008 SC 376); and (6) "Zafar V. The State" (2008 SCMR 1254), wherein it has been maintained that such like provisions of law are directory in nature and non-compliance thereof, would not vitiate the entire proceedings. In case titled "Zafar V. The State", supra, it has been held that:

"Even the provisions of section 20 to 22 of C.N.S.A. being directory, non-compliance thereof would not be a ground for holding the trial/conviction bad in the eyes of law. On this ground, the conviction of the appellant cannot be set aside".

In another case titled "Syed Zulfiqar Shah Vs. The State through Advocate General, Khyber Pakhtunkhwa, Peshawar" (2022 SCMR 1450), it has been held by the Apex Court that:-

8. Scanning through the above judicial pronouncements, we note that, the considered view expressed in Fida Jan case by a three-member bench of this Court, as to the directory nature of the provisions of section 20 of the CNSA of 1997 still holds the filed. The Court, in that case, has categorically held that because of the directory nature of provisions of section 20, the non-compliance thereof cannot be the sole ground for acquittal of the accused, and rendering the entire trial bad in the eye of law. This considered view of a three-member bench of this Court has neither been dissented to by any co-equal bench nor overruled by a larger bench.

9. Thus, we hold that the provisions of section 27 of the Khyber Pakhtunkhwa Act of 2019, which are identical to the provisions of section 20 of the CNSA of 1997, are also directory in nature, and their non-compliance though may

entail departmental disciplinary action or penal action or both against the delinquent police official, but do not affect the admissibility of the fact of recovery of the narcotics in evidence before the trial Court. The contention of the learned counsel for the petitioner is, therefore, rejected".

In view of the aforesaid discussion and the case law cited above, I have no hesitation to hold that Sections 27, 28, 29, and 30 of the *ibid* Act are directory in nature and non-compliance thereof, would not vitiate the proceedings.

9. The contention of learned counsel for the petitioner that due to non-compliance of Section 33 of the Khyber Pakhtunkhwa Control of Narcotic Substances Act, the recovered narcotic was not produced before the Magistrate within 24 hours, as per the requirement of law, also does not hold ground. Section 33 being *pari materia* to Section 27 of the CNS Act, 1997 with a slight adjustment where a period of 24 hours has been provided in the former law for production of accused and the recovered narcotic. From the plain reading of Section 33 it is abundantly clear that it is only restricted to the recovery effected pursuant to a search warrant of arrest issued by the Special Court and not otherwise, which is not the case in hand.

10. Perusal of the record reveals that huge quantity of amphetamine/Ice has been recovered from personal possession of the petitioner and the allegations contained in the FIR are duly supported by the recovery memo and the

10. Perusal of the record reveals that huge quantity of amphetamine/Ice has been recovered from personal possession of the petitioner and the allegations contained in the FIR are duly supported by the recovery memo and the FSL report regarding the sample separated from the recovered contraband. Needless to mention that it is now well-settled that police witnesses are as good witnesses as from the general public. Even there is nothing on the record to suggest that the police has any animosity to falsely implicate the petitioner in the present case. Moreover, amphetamine/Ice is also a controlled drug and being locally manufactured, it is most dangerous to the human health and as per recent studies, the group who are most at risk of getting abused from amphetamine/ice are colleges, universities' students and young boys.

11. Taking a tentative assessment of the material available on file, reasonable grounds do exist to believe that the accused/petitioner is *prima facie* connected with the commission of offence which attracts the prohibitory limb of Section 497, Cr.P.C., hence, he is not entitled to the concession of bail. Accordingly, this petition being devoid of merit stands dismissed.

Announced.
Dt: 31.8.2022.

Kifayat/PS*



JUDGE

(S.B)
Hon'ble Mr. Justice Muhammad Faheem Wali