

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

B.A No. 2825-P of 2023

Umar Ali
Versus
The State etc

JUDGEMENT

Date of hearing: 07.8.2023

For petitioner: Mr. Jawad Khan Advocate.

For State: Mr. Nisar Khan AAG.

FAZAL SUBHAN, J.— Instant is post arrest bail of petitioner Umar Ali son of Nasrat Ali, arrested in case FIR No.47 dated 24.6.2023 registered under section 9-D and 17 KP CNSA, 2019 of PS Excise, Mardan.

2. Facts of the case are that on 24.6.2023 at 19:00 hours Inspector Muhammad Riaz SHO intercepted a motorcar No.LLE-14-8048 and on query the driver disclosed his name as Imtiaz Ahmad son of Riaz Ahmad while another person sitting on the front seat revealed himself as Umar Ali son of Nasrat Ali (the present petitioner). Upon search of the motorcar from underneath the front seats 20/20 total 40 packets of chars concealed in secret cavities were recovered and on weighment were found to be 48000 grams and after necessary proceedings on the spot both the accused were arrested and murasila was sent to the PS for registration of case.

3. With this background of the case, arguments of learned counsel for petitioner and learned AAG for State heard and after tentative assessment of record, it is clear that petitioner was not driver of the vehicle nor any connection of the petitioner with the main accused Imtiaz Ahmad has yet been established. At the same time there is nothing on record to show that the vehicle belongs to the petitioner, rather as per contents of FIR, he was seated in the vehicle on front seat and it is yet to be established during trial that the petitioner had conscious knowledge of the presence of narcotics in the concealed cavities of the vehicle. In such like situation case of the petitioner falls within the ambit of further inquiry into his guilt. This court in Cr. Misc: B.A No.3147-P/2021 in a similar situation has granted bail to the petitioner Musa Khan with the following observations:-



“True that huge quantity of narcotic has been recovered from secret cavities made in *diggi* of the motorcar which was in full control and possession of co-accused Muhammad Rafiq but noticeable aspect of the case is that the petitioner was found sitting on front seat of the vehicle at the time of recovery. There is nothing on the case file to show that either the petitioner was privy to the bid of smuggling or was having any slightest conscious knowledge about presence of the recovered contraband in the car so as to show his nexus with the foiled attempt of the smuggling. Thus his participation in the crime needs further consideration. No doubt 20 gram heroin and 10 gram ice has been recovered from direct possession of the petitioner but *ibid* meager quantity of contraband would not be made a base to dub

him as co-smuggler of the narcotic which is subject matter of the instant case.”

4. In another case titled “Gul Manan-Vs-the State” reported in 2021 SCMR 1804 (Supreme Court of Pakistan) it has been held that:-

“After hearing the learned counsel for the petitioner and learned counsel appearing on behalf of State at length and perusal of available record, it has been observed by us that it has not been disputed that when the vehicle was stopped by the police, the petitioner was merely sitting in the vehicle and he was not driving the said vehicle. Narcotics were allegedly recovered from the secret cavities of the vehicle. Learned counsel appearing on behalf of State after going through the file confirm that there is no connection of the petitioner with the vehicle and even nothing was recovered from his personal possession or on his pointation. He, however, contends that petitioner was in the vehicle and in the circumstances it can be safely presumed that he had conscious knowledge of the narcotics concealed in that vehicle and even he attempted to run away from the spot, when the police signaled the vehicle to stop. The question, the petitioner who was not a driver of the vehicle has conscious knowledge of the narcotics concealed in the vehicle needs serious consideration, which shall be determined by the learned trial Court after recording evidence. In the circumstances, case against the petitioner calls for further inquiry falling within the ambit of section 497 (2), Code of Criminal Procedure.”

5. For these reasons and while relying upon the above referred judgments, petitioner has made out a case for grant o bail. Resultantly, this petition for post arrest bail is allowed and the petitioner is admitted to bail subject to furnishing bail bonds of Rs.3,00,000/- (three lacs) with two

sureties, each in the like amount to the satisfaction of Illaqa/Duty Judicial Magistrate. Sureties must be local, reliable and men of means. Above are the detailed reasons of my short order of the even date.

Announced

07.8.2023

Ihsan P.S.


JUDGE

(S.B)

Hon'ble Mr. Justice Fazal Subhan