

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

Cr.M. (BA) No.2230-P/2021

Irfan

Vs.

The State

Date of hearing 27.08.2021
Date of announcement 6-9-2021
Petitioner(s) by: M/s. Noor Alam Khan and Shabina Noor, Advocates.
State by: Muhammad Nisar Khan, AAG alongwith Muhammad Bilal Khan, Government Analyst/ Chemical Examiner.

JUDGMENT

IJAZ ANWAR, J. This Bail Application has been filed by the accused/petitioner Irfan s/o Rehmat and is seeking his release on bail in case FIR No.736 dated 07.06.2021 under Section 11-C KPCNSA at Police Station Gulbahar, District Peshawar, wherein, he is charged for the recovery of 1050 grams of ICE from his personal possession.

2. Learned counsel for the accused/petitioner argued that case of the accused is a border line case and according to him, Section 9 of the Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019 (hereinafter to be referred as "the Act of 2019") will be applicable and as per Section 9(c) of "the Act of 2019", the case of the accused does not come within the prohibitory clause of Section 497

Cr.P.C. He further argued that as per the FSL report, the recovered substance is proved to be amphetamine and as such, Section 11 of "the Act of 2019" is not applicable to the case of the accused/petitioner.

3. On the other hand, the learned AAG representing the State opposed the arguments of learned counsel for the accused/petitioner and contended that amphetamine is from the same family of methamphetamine. He further argued that being locally manufactured, amphetamine is a most dangerous drug. The chemical examiner present in Court also supported the arguments of the learned AAG, however, remained unable to distinguish amphetamine with the methamphetamine. He, however, admitted that both have separate chemical formulas. He further stated that amphetamine is included in methamphetamine.

4. Arguments heard. Record perused.

5. Prior to the promulgation of "the Act of 2019" the Control of Narcotic Substances Act, 1997 (Act No.XXV of 1997) (hereinafter to be referred as "the Act of 1997") was in the field; however, after the promulgation of "the Act of 2019", "the Act of 1997" was repealed to the extent of cultivation, possession, selling, purchasing, delivery and transportation etc. within the province of Khyber Pakhtunkhwa. However, so far as I understand, the aim and object of "the Act of 2019" was to provide for strict

punishments for the newly introduced drugs duly find its mention in the Schedule attached to “the Act of 2019”. The main issue before this Court is whether the recovery of amphetamine (chemical name (+/-)-a-methyphenethylamine) can be punished under Section 9 or Section 11 of “the Act of 2019”. In Section 2(aj) of “the Act of 2019”, “psychotropic substance” is defined as under:-

“Psychotropic substance means the substance, specified in the Schedule appended to this Act and such substances as Government may, by notification in the official Gazette, declare to be a psychotropic substance”.

Similarly, in Section 9 of “the Act of 2019”, punishments have also been provided for “psychotropic substance” and at the same time, Section 11(a) has also provided different punishments in view of the quantity of methamphetamine; while, as referred to above, in the Schedule, methamphetamine is also mentioned and is included in “psychotropic substance” in accordance with the definition given to it under Act *ibid*, for which punishment is also provided under Section 9(a) of “the Act of 2019”. In order to clarify this anomaly, the Khyber Pakhtunkhwa Control of Narcotics Substances (Second Amendment) Act, 2020 (hereinafter to be referred as “the Second Amendment Act, 2020”) was introduced. In Section 9, sub-section (1), clause (a), after the words “psychotropic substance”, the words “except methamphetamine” was inserted; similarly, a

proviso was also added to clause (a) in the following words:-

“Provided that offences relating to or involving methamphetamine, as provided in section 10, shall be dealt in accordance with Section 11 of this Act; or”

6. There is no cavil with the proposition that the psychotropic substance as mentioned in the Schedule to “the Act of 2019” also includes amphetamine at S.No.1 with its international non-proprietary name; while methamphetamine is mentioned at S.No.40 of the Schedule with its non-proprietary or trival name as ICE/Chalk/Crystal. In view of “the Second Amendment Act, 2020”, methamphetamine is completely distinguished from other psychotropic substance for the purpose of punishment and as per the added proviso, only Sections 10 and 11 will now deal with the offences relating to methamphetamine. Section 10 “of the Act of 2019” provides for “prohibition of methamphetamine”, as under:-

10. Prohibition of methamphetamine.---No one shall produce, manufacture, extract, prepare, possess, offer for sale, sell, purchase, distribute, deliver on any terms whatsoever, transport, dispatch, methamphetamine, except for medical, scientific or industrial purposes in the manner and subject to such conditions, as may be specified by Government.



While the punishment is provided under Section 11 “of the Act of 2019” for the contravention of the provisions of Section 10, which is reproduced as under:-

11. Punishment for contravention of section 10:

Whoever, contravenes the provisions of section 10 shall be punished with-

(a) imprisonment, upto seven (07) years and shall also be liable to fine not less than rupees three (03) lac, if the quantity of methamphetamine does not exceed 100 grams;

(b) imprisonment, not less than ten (10) years and shall also be liable to fine not less than rupees five (05) lac, if the quantity of methamphetamine exceeding 100 grams, but does not exceed one (01) kilogram;

(c) death, imprisonment for life or imprisonment for a term which may extend upto fourteen (14) years and with a fine which may extend to rupees one (01) million, if the quantity of methamphetamine exceeds one (01) kilogram;

7. In the case in hand, 1050 grams of amphetamine is shown recovered from the accused/petitioner. Similarly, when the recovered substance was sent to the FSL and it was subjected to physical and chemical analysis, its test revealed the sample as ‘amphetamine’. Thus, in view of the clear wordings “of the Act of 2019”, amphetamine being declared as psychotropic substance; as such, its punishment will be dealt with under the provisions of Section 9 “of the Act of 2019”. (Underline provided for emphasis)

8. Now coming to the case of the accused/petitioner. In terms of Section 9(d) "of the Act of 2019", if the quantity of narcotic substance exceeds the limit of 01 KG, the punishment provided is death, imprisonment for life or imprisonment for a term which may extend to 14 years and with fine, which may extend to Rs.1 Million and not less than Rs.5 lac. The case of the accused/petitioner is, thus, hit by the prohibitory clause of Section 497 Cr.P.C; besides, as demonstrated by the Chemical Examiner before this Court that amphetamine is also a controlled drug and being locally manufactured, it is a most dangerous to the human health and as per recent studies, the group who are most at risk of abusing amphetamine are colleges, universities' students and young boys. As such, I am not inclined to consider the argument that it being a border line case for the purpose of bail.

9. For the reasons stated above, this Bail Application fails. Accordingly, it stands dismissed.

Announced

Dt: 6.9.2021



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JUDGE