

IN THE PESHAWAR HIGH COURT,
PESHAWAR,
[Judicial Department].

Cr. Misc.BA No.2837-P/2021

Mst. Nadia w/o Parvez,
r/o Batkhel, Dagar Buner.

Petitioner (s)

VERSUS

The State

Respondent (s)

For Petitioner (s) :-

Mst. Asim Shamshad, Advocate.

For State :-

Mr. Muhammad Nisar Khan AAG.

Date of hearing:

24.09.2021

ORDER

ROOH-UL-AMIN KHAN, J:-Through this common order, I propose to decide the instant bail application, filed by Mst. Nadia and connected Cr.Misc.BA No.2860-P/2021, filed by Mst. Najam, the petitioners respectively, as both pertain to one and the same FIR No.900 dated 18.07.2021, registered under section 9 (d) KP Control of Narcotic Substances Act, 2019, in Police Station Chamkani, Peshawar. The petitioners are behind the bars in the cited case and through their respective application they are seeking post arrest bail.

2. According to FIR, on 18.07.2021 at 1245 hours, Javed Khan ASI along with other police officials intercepted a motorcar bearing registration No.MJ.309-Islamabad on motorway. On query, its driver disclosed his name as Muhammad Iftikhar, the person sitting in front seat as Paravez and two ladies sitting in the rear seat as Mst. Nadia and Mst. Najma (petitioners). On search 18 packet containing chars, each weighing 1200 grams and five packet containing opium, each weighing 1200 grams, were recovered from secret cavities made

beneath the rear seat. He separated 05 grams from each packet as samples for chemical analysis by the FSL. The petitioner along with male accused were arrested there and then, hence, this case.

3. Having heard the argument of learned counsel for the parties, it appears from the record that no contraband narcotic has been shown recovered from personal/direct possession of the petitioners. The recovery of narcotics has been shown from secret cavities of the motorcar. The only circumstance against the petitioners is that they were travelling in the aforesaid motorcar driven by driver co-accused Muhammad Iftikhar. In absence of any clear evidence/material on record to *prima facie* establish conscious knowledge of the petitioner qua the concealed narcotics or their nexus with the driver co-accused, their participation in the commission of offence requires further probe, hence, they entitled to the concession of bail in light of ratio of judgments of the Hon'ble apex Court, rendered in cases titled, "**Javed Vs the State**" (2017 SCMR 531), Cr.Petition No.1114 of 2017, titled, "**Farhad Khan Vs the State through AG, KPK**" dated 21.12.2017, Cr.Misc.BA No.1573-P/2017, "**Sad Khan Vs the State/ANF**" decided on 25.09.2017, Cr,Misc.BA No.1480-P/2017 decided on 25.07.2017 and Cr.Misc.BA No.2283-P/2017 decided on 27.10.2017, wherein bail has been granted to accused person(s) in cases of recovery of narcotics, whose role was that of front-seater(s).

4. Besides, according to record petitioner Mst. Nadia is pregnant of 21 weeks, whereas, petitioner Mst. Najma is having a suckling baby of 2 years. In the famous case of Ghamidiyya, our Holy Prophet Muhammad (S.A.W) had suspended the sentence of pregnant woman, not only till delivery of her child but also posted it till suckling period i.e. two years, obviously for the welfare of her kid, which indicate

towards the paramount importance and significance of the right of a suckling child in Islam and the unprecedented care taken of, and the protection given to a child born or expected to be born, by the Holy Prophet Muhammad (S.A.W). It has been held by the Hon'ble Supreme Court in case titled "**Mst. Nusrat Vs the State**" (1996 SCMR 973), that the aforesaid golden principle of administration of justice enunciated by the Holy Prophet Muhammad (PBUH), must be strictly observed and followed in the country and the august apex Court, respectfully following the same golden principle, allowed bail to petitioner in the cited case. The Apex Court in the last Paragraph of the judgment added that the principles of justice enunciated by the Muslim Jurists/Imams/Qazis are more illuminating and full of wisdom than principles enunciated by the Western Jurists and scholars..

5. Accordingly, this and the connected Cr.Misc.BA no.2860-P/2021 are allowed. Accused/petitioners are admitted to bail provided each one of them furnishes bail bonds in the sum of rupees two lacs with two local, reliable and resourceful sureties each in the like amount to the satisfaction of learned Illaqa Judicial Magistrate/MOD concerned.

Announced:
24.09.2021
M.Siraj Afridi PS

Senior Puisne Judge

SB of Mr. Justice Rooh ul Amin Khan Hon'ble Senior Puisne Judge