

PESHAWAR HIGH COURT,
BANNU BENCH.

FORM 'A'
FORM OF ORDER SHEET

Date of order or proceedings (1)	Order or other proceedings with signature of Judge (s). (2)						
18.02.2018	<p><u>Cr.M.No.77-B/2018 in Cr.A # 217-B/2018.</u></p> <p>Present:</p> <p style="padding-left: 40px;">Mr. Iftikhar Ahmad Durrani, advocate for appellant / petitioner.</p> <p style="padding-left: 40px;">Mr. Shahid Hameed Qureshi, Addl: A.G for the State.</p> <p style="text-align: center;">***</p> <p><u>SHAKEEL AHMAD, J.---</u> Through this Cr.Misc: No.77-B/2018 U/S. 426 Cr.P.C, the petitioners namely, Naik Muhammad, Mst: Alima Bibi alias Asma Bibi, Mst; Gul Zarina and Mst: Gul Roshan Zada, have sought suspension of their sentence, who were convicted U/S. 9 (C) Control of Narcotic Substances Act, 1997 and sentenced as under:-</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="text-align: center;">S.No</th> <th style="text-align: center;">Name of accused</th> <th style="text-align: center;">Sentence</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1</td> <td style="text-align: center;">Naik Muhammad</td> <td style="text-align: center;">Sentenced to rigorous imprisonment for life with a fine of Rs.100000/- (One million) in default</td> </tr> </tbody> </table>	S.No	Name of accused	Sentence	1	Naik Muhammad	Sentenced to rigorous imprisonment for life with a fine of Rs.100000/- (One million) in default
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		thereof to further under to six months SI
2	All the three lady accused namely- Alima Bibi, Mst; Gul Zarina and Mst: Gul Shan Zada	Five years RI with a fine of Rs.100000/- each, in default of payment of fine to further undergo six months SI.

2. Learned counsel for the petitioners contended that at the time of arrest Mst: Gul Zarina was accompanied by a daughter aged about three years and six months and also pregnant, and now she has given birth to a male child during her captivity. He next contended that Mst: Gul Roshan Zada was accompanied by two daughters namely- Gul-e-Lala aged about three years and Ayesha about two years while Mst: Alima Bibi is old and infirm. He further contended that sentence awarded to all the three lady accused is short. He lastly contended that sentence of accused Naik Muhammad is not based on cogent evidence and there is no likely-hood that the appeal to be heard in near future and prayed for suspension of petitioners' sentences.

3. Vide order dated 04.03.2019, Superintendent Central Jail was directed to furnish

detail report regarding female prisoners. In pursuance thereof the report was submitted, wherein, he admitted the above contention of the learned counsel for the petitioners only to the extent of petitioner Mst: Gul Zarin and Mst: Gul Roshan Zada.

4. Learned Addl: A.G appearing on behalf of the state conceded prayer of the learned counsel for the petitioners only to the extent of lady accused. Regarding male accused he submitted that the impugned judgment does not suffer from legal error and maintained that after conviction, the presumption of his innocence has come to an end.

5. We have heard arguments of learned counsel for the parties and have gone through the record with their able assistance.

6. There is no cavil to the proposition that the appellate court possesses powers U/S. 426 Cr.P.C, to suspend the sentence of a convict and release him on bail. Such power to grant bail is not fettered by the provisions of Section. 497 Cr.P.C. In this context reliance can well be placed on the judgments reported as *The State V Shah Sawar*

(1969 SCMR 151), wherein it was held that power U/S. 426 Cr.P.C is not controlled by the provision of Section. 496 & 497 Cr.P.C, however, the principles provided therein indicted will have to be borne in mind in granting or refusing bail. In this respect reference may also be made to the case reported as ***Bahadar Khan V The State (1969 SCMR 81)***.

7. It was admitted by the prosecution that at the time of arrest accused Mst: Gul Zarina was accompanied by one daughter namely-Sonia aged about three years and six months, and she was pregnant of 28 weeks and during captivity she gave birth to a male child on 14.01.2019 at about 03:50 PM. It was also admitted that Mst: Gul Roshan Zada was accompanied by two daughters namely-Gul-e-Lala aged about three years and Ayesha aged about two years and that they are confined in female section of the jail with above babies. We feel proud to follow the principle laid-down by our Holy Prophet Muhammad (PBUH) in the famous case of Ghamidiyya, the Holy Prophet Muhammad (PBUH) was pleased to suspend the sentence passed on a pregnant woman not only till

delivery of child, but, for period of Riza'at as well, basically for the welfare of the child. In this behalf reliance can be placed on the case reported as ***Hazoor Bakhsh V Federation of Pakistan (PLD 1981 FSC 145)***. In the following cases as well, the sentences passed on female convicts were suspended for the betterment of children:-

- (1) ***Mst. Nusrat v. The State 1996 SCMR 973***, (2) ***Liaqat and another v. the State 1999 PCr.LJ 1004***, (3) ***Mst. Nasree v. The State 1998 MLD 1350***, (4) ***Mst. Ansar Jan v. The State and another 2000 PCr.LJ 586***, (5) ***Hazoor Bakhsh v. Federation of Pakistan PLD 1981 FSC 145***.

8. Perusal of record further reflects that lady accused were sentenced only for five years, which is a short sentence and there is no likelihood of the appeal being taken up in near future. They have served sentence for eight months and 14 days and also earned remission for one year three months and six days. Benefit of Section. 382-B Cr.P.C was also extended to them. Thus, they have made out a case for suspension of sentence.

In this behalf reliance can be placed on the cases reported as *Nazar Ahmad & 2 others V The state (2005 P.Cr.L.J 657 Karachi)*, *Abdul Hameed V Mhammad Abdullah (1999 SCMR 2589)*, *Ilyas alias Billu V The State (2008 MLD 312)* and *Mehmood Iqbal V The State (2008 MLD 1376)*.

9. So far as case of Male accused Naik Muhammad is concerned, perusal of the facts and judgment impugned herein, leads us to the conclusion that the judgment on the face of it, does not suffer from any legal error, therefore, we feel that it would not be justified to suspend his sentence.

10. For what has been discussed hereinabove, this petition U/S. 426 Cr.P.C is partially allowed to the extent of all the three lady accused, the conviction and sentence awarded to all the lady accused are suspended till the final adjudication of the instant appeal and they are directed to be released on bail subject to furnishing bail bonds in the sum of Rs.2,00,000/-(two lacs) with two sureties each in the like amount to the satisfaction of the learned trial court. The learned trial court must ensure that the sureties are reliable

men of means, local, and related to the lady accused within the prohibited degree. However, prayer of male accused Naik Muhammad for suspension of sentence is declined.

Announced

18.02.2019

JUDGE.

JUDGE.