

Judgment Sheet
PESHAWAR HIGH COURT, D.I.KHAN BENCH
(Judicial Department)

Cr.MB. No.148-D/2022.

Javed Khan
Vs.
The State.

JUDGMENT

For Petitioner: Muhammad Ilyas Khan Marwat,
Advocate.

For State: Mr. Hamid Sarfaraz, Special
Prosecutor, ANF.

Date of hearing: **15.4.2022.**

MUHAMMAD FAHEEM WALI, J.- Being booked in case FIR No.02/2021 dated 13.3.2021, under Section 9(c) of the Control of Narcotic Substance Act, 1997, registered at police station ANF, D.I.Khan, the petitioner seeks post arrest bail, on statutory ground of delay in conclusion of trial.

2. Brief facts of the case as narrated in the FIR, registered on the basis of murasila, in brief, are that on 13.3.2021, complainant Nasrullah Khan Inspector received information from his high-ups that notorious narcotic peddler Javed Khan son of Aman Ullah Khan, resident of Lakki Marwat would smuggle and hand over huge quantity of narcotics to his customer, upon which the complainant alongwith other police *Nafri* rushed to the spot in an official vehicle where the petitioner was



apprehended with a shopper containing seven packets of Charas, each weighing 1000 gram, total 7000 gram Charas was recovered from the accused, 10/10 gram Charas were separated from the recovered contraband for chemical analysis and were sealed in parcels No.1 to 7, whereas the remaining Charas was sealed in parcel No.8. The seizing officer drafted the murasila and sent the same to the police station where the captioned FIR was registered against the accused/petitioner.

3. Arguments heard and record gone through.

4. Since the petitioner has sought bail on statutory ground of delay in conclusion of his trial, therefore, before proceeding further, it would be convenient to reproduce Section 497(1)(3)(a), Cr.P.C. which is as under:-



(a) Who, being accused of an offence punishable with death, has been detained for such offence for a continuous period exceeding one year or in case of a woman exceeding six months and whose trial for such offence has not concluded.”

Part (a) of third proviso to section 497(1), Cr.P.C. envisages that in an offence not punishable with death, the trial of the accused is to be concluded within a period of one year from the date of his/her detention, and in case the trial was not so concluded, the law mandates the release of the accused on bail. In this view of the matter, the accused has a statutory right to be released on bail if his trial for such offence

was not concluded within a period of one year from the date of his detention and such period begins from the date of the arrest/detention of the accused and it is of little importance as to when the charge was framed and the trial commenced. The purpose and objective of the provision is to ensure that the trial of an accused is conducted expeditiously and the pre-conviction detention of an accused does not extend beyond the period of one year, in cases involving offences not punishable with death. In such cases, if the trial of an accused was not concluded within a year of his detention, the statutory right to be released on bail ripened in his favour. This statutory right to be released on bail is, however, subject to two exceptions: one is embodied in the third proviso itself and the second is provided in the fourth proviso to section 497, Cr.P.C. As per these exceptions, the right to be released on bail on the ground of delay in conclusion of the trial is not available to an accused if:

(i) the delay in conclusion of the trial is occasioned by an act or omission of the accused or by any other person acting on his behalf, or (ii) the accused is a convicted offender for an offence punishable with death or imprisonment for life or is, in the opinion of the Court, a hardened, desperate or dangerous criminal



or is accused of an act of terrorism punishable with death or imprisonment for life.

The second exception to the right of the accused to be released on bail on the ground of delay in conclusion of the trial is provided in the fourth proviso to section 497, Cr.P.C. According to which the provisions of the third proviso do not apply to the accused who is: (i) a convicted offender for an offence punishable with death or imprisonment for life; or (ii) a hardened, desperate or dangerous criminal, in the opinion of the Court; or (iii) an accused of an act of terrorism punishable with death or imprisonment for life.

5. Another important aspect that require elucidation regarding the peculiar facts and circumstances of the case is the provisions of the Control of Narcotic Substances Act, where in proviso to Section 9(c) of the Narcotic Substances Act provides that if quantity of narcotics recovered exceeds 10 K.Gs. then the punishment shall not be less than imprisonment for life. By necessary application it will conversely suggest that if the quantity of recovered narcotic is less than 10 K.Gs., then the mandatory punishment of imprisonment for life so provided in the proviso would not be applicable. Keeping the above narration in mind and being



mindful of the facts of the instant case, allegedly, 7 K.Gs. of Charas have been recovered from the accused, hence, his case would come under Part (a) of the 3rd proviso of Section 497(1), Cr.P.C., as the mandatory punishment of death and imprisonment for life pertains to only those cases where the quantity recovered exceeds 10 K.Gs. For this reason, the accused herein can claim benefit to be released on statutory ground under section 497(1)(a) of 3rd proviso that provides entitlement to be released on bail after continuous detention exceeding one year, if delay in conclusion of the trial could not be attributed to him or any person acting on his behalf.

6. It appears from the record available on file that the petitioner was arrested on 13.3.2021, complete challan was prepared on 16.4.2021, which was submitted before learned trial Court on 12.7.2021, provision of section 265-C, Cr.P.C. was complied with on 30.8.2021, whereas charge was framed on 07.9.2021. On 13.9.2021, PWs were absent, therefore, NBWA was directed to be issued against them for 17.9.2021, on which date it was Note Reader and case was adjourned to 25.9.2021. On 25.9.2021, there was strike of the lawyers community and case was adjourned to 02.10.2021. On 02.10.2021, PWs Razaf Akhtar and Taimur ul Hassan were present but they requested for



adjournment to prepare the case and on their request case was adjourned to 08.10.2021, on which date PWs were absent, therefore, NBWA was ordered to be issued and salaries of the PWs were attached. On 16.10.2021 and 23.10.2021, the Presiding Officer was on leave. On 28.10.2021 PWs Razaf Akhtar and Taimur ul Hassan were present but were sent unexamined as the learned defence counsel was busy in trial of another case, hence, case was adjourned to 30.10.2021. On 30.10.2021, the lawyers community was on strike. The above order sheets and the remaining order sheets till 12.3.2022 of the trial Court would indicate that the delay in conclusion of trial was caused on the part of prosecution. Even otherwise, the period of detention exceeds one year, while there is nothing on the record that accused is; (i) a convicted offender for an offence punishable with death or imprisonment for life; or (ii) a hardened, desperate or dangerous criminal, in the opinion of the Court; or (iii) an accused of an act of terrorism punishable with death or imprisonment for life. In this view of the matter, the accused/petitioner is entitled to the concession of bail. Guidance is sought from the case law reported as "Shakeel Shah Vs. The State and others" (2022 SCMR 1).




7. For what has been stated above, this petition is allowed and the accused/petitioner is directed

to be released on bail subject to furnishing bail bond in the sum of Rs:100,000/- (one lac) with two sureties, each in the like amount, to the satisfaction of learned Illaqa/Duty Judicial Magistrate.

8. Above are the reasons of my short order of even date announced on 15.4.2022, which is reproduced herein below:-

“For reasons to be recorded later, this petition for post arrest bail is allowed and accused/petitioner Javed Khan son of Aman Ullah Khan is admitted to bail subject to furnishing bail bonds in the sum of Rs:100,000/- with two sureties, each in the like amount, to the satisfaction of learned Illaqa/Duty Judicial Magistrate”.



JUDGE

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

(Kifayat/ PS*)



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