

IN THE COURT OF ADIL ZEB KHAN
ADDITIONAL SESSIONS JUDGE/JUDGE SPECIAL COURT
MARDAN AT KATLANG

Petition No. 292/BA of 2024

Gula Hassan versus State

Order—02

18.07.2024

1. Altaf Ahmad APP for the State present. Accused/petitioner through his counsel, Muhammad Waqas, advocate present.
2. Accused/petitioner Gula Hassan son of Dheran Shah resident of Tawas Khel, Sangao, Tehsil Katlang, District Mardan seeks his post-arrest bail in case FIR No. 285 dated 18.06.2024 under section 9DKPCNSA of police station Baizai, Mardan.
3. Record received. Arguments heard and record perused.
4. Facts forming matrix of the instant case are that on the relevant day, the Seizing Officer and other police officials had made barricade on the place of occurrence; in the meanwhile, a person came from Mian Khan side in suspicious condition who, on seeing the police party, tried to escape therefrom but he was chased and overpowered with the help of police contingents; on query, the said person disclosed his name as Gula Hassan son of Dheran Shah (accused/petitioner); on his body search, two packets of charas Pukhta were recovered from a white shopping bag tightened with his trouser fold; on weighing through digital scale, one packet came to 1057 grams and second packet came to 1212 grams total making 2269 grams; 5 grams of charas was separated from each packet of the recovered contraband for chemical analysis and sealed into parcels No. 1 and 2 while remaining charas weighing 2259 grams was sealed into parcel No. 3; videography of the occurrence was made and

transferred to a memory card which was sealed into parcel No. 4; the accused/petitioner was arrested on the spot.

5. After hearing both the sides and perusal of record this court is of considered opinion that modus operandi for separation of representative samples of charas has been shown as a knife in the Murasila however the said knife has not been taken into possession vide recovery memo as recovery memo dated 18.06.2024 is completely silent regarding this aspect of the case.
6. Though it is true that the association of private independent persons is not a legal must in narcotics cases but this fact does not mean that if such persons are available, they should not even be asked to become witness to recovery proceedings. In the instant case, the occurrence is of daytime but despite this fact, the Seizing Officer has failed to show any reason that why no private persons have been associated with the recovery proceedings. In this eventuality, the non-association of private independent persons creates serious doubt in the prosecution case. Wisdom in this regard is drawn from **2023 YLR 321 [Sindh (Hyderabad Bench)], 2023 YLR 153 [Sindh (Hyderabad Bench)], and 2023 YLR Note 22 [Sindh (Hyderabad Bench)]**.
7. Perusal of site plan shows that the same is not in consonance with the Murasila for the reason that as per the Murasila report, the accused/petitioner escaped from but he was overpowered while the site plan is completely silent regarding the said escape made by the accused/petitioner as no point has been given to the same in the site plan.
8. Perusal of record divulges that FSL report is not available and in the absence of the FSL report, it cannot be determined that whether the recovered stuff was Charas or otherwise. This aspect tilts the case of

accused/petitioner towards further inquiry and wisdom in this regard is drawn from a judgment of Hon'ble apex court of Pakistan rendered in the case of "**Murad Khan vs The State**" reported as **2020 SCMR 431**.

9. The perusal of record does not show the previous involvement of accused in cases of similar nature, or that he is a previous convict. The accused/petitioner has not confessed his guilt before the court. The petitioner is neither desperate/hardened criminal, nor required for further investigation to the local police. Keeping the accused behind the bars is of no useful purpose to the prosecution, whereas his release on bail is not detrimental to his case.
10. The cardinal principle of law is that, a mistaken relief of bail can be repaired through subsequent conviction, but no relief can be offered for unjustified confinement, be it subsequent acquittal. Wisdom in this regard is drawn from: **(i) Faisal Khan vs The State 2017 MLD 1220 (ii) Gul Sher vs The State 2000 MLD 961 (iii) Nazir Ahmad vs The State 2009 P.Cr.L.J 700**.
11. It has been held time and again by the august Supreme Court that bail does not mean acquittal of accused but only change of custody from Government agencies to the sureties, who on furnishing bonds take responsibility to produce the accused whenever and wherever required to be produced. Wisdom in this regard is withdrawn from: **Haji Muhammad Nazir and others vs The State [2008 SCMR 807 (Supreme Court of Pakistan)]**.
12. So, in these circumstances, the case of accused/petitioner is one of further inquiry. Hence, the bail application is accepted and he is admitted to bail provided he furnishes bail bonds in sum of Rs. 150,000/- with two sureties each in the like amount to the satisfaction of the court of learned Judicial Magistrate/MOD.

Sureties must be local, reliable, and men of means. Copy of this order be placed on judicial and police file. Requisitioned record returned to the quarter concerned and file of this court be consigned to record room after completion and compilation.

Announced
18.07.2024

(Adil Zeb Khan)
Addl: Sessions Judge/JSC,
Mardan at Katlang