

Present:

Tafseel Khan Afridi Advocate, for the accused/petitioner
APP Amir Shah for State

This order shall dispose of **post arrest bail** application filed on behalf of accused/petitioner, **Jan Akbar** s/o Khyal Badshah; caste Malik Din Khel, Karna Khel; r/o Bar Nala Khwar, District Khyber; who is confined in jail in case **FIR No. 82** dated 19-07-2020, registered u/s **9 (d) of KP-CNSA**, 2019 in PS Lower Orakzai.

Facts of the case, according to available record, are; that an ASI, of police check post Stori Khel, received spy information in respect of an attempt to smuggle narcotics through a motor car; that a motor car bearing no. LXF-251/Lahore, which was being driven by the present accused/petitioner, was stopped for checking; that a cloth bag was found beneath the front seat, containing 06 packets of Charas; that on weighing, each packet was found to be 1200 grams (total 7200 grams); that the accused/petitioner was arrested and the recovered substance was sealed into different parcels and seized.

Arguments heard and record perused, tentative assessment of which shows that:

1. The alleged proceedings of search, seizure and arrest have been conducted by an ASI, who is not an authorized officer, in terms of section 28 r/w section 2 (e) of KP-CNSA. The said ASI has neither informed any superior officer after receipt of alleged spy information, nor after seizure and arrest of accused. Interestingly, the case was marked to investigation staff by the Muharrir of PS, without informing or involving any superior police official. Thus, mandatory provisions of law have been violated.

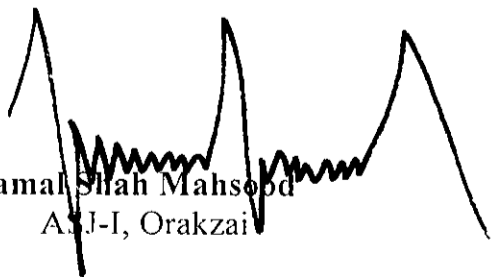
JAMAL SHAH MAHSUD
Addl: District & Sessions Judge-I,
Orakzai at Hangu

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2. The allegedly recovered narcotics was not produced before special court within 24 hours of seizure and arrest; in fact, the same has not been produced before special court at all. Thus, the mandatory provisions of section 33 of KP-CNSA have also been violated.
3. Nothing has been brought on record so far to prove that the accused/petitioner was owner of the vehicle allegedly involved in the occurrence.
4. The record is silent regarding previous involvement of the accused in any such case.

In these circumstances the accused/petitioner has made out a case of further inquiry into his guilt for the purpose of grant of bail. Accordingly, instant petition is **allowed** and accused/petitioner Jan Akbar is directed to be released on post arrest bail, subject to furnishing of bail bonds in the sum of **Rs. 200,000** (two lacs) with two sureties, each in the like amount, to the satisfaction of this court or MOD. Let a copy of this order be placed on record of the case and the same be returned to the quarter concerned. Let this file is to be consigned to record room after necessary completion and compilation.

Announced
30-07-2020


Jamal Shah Mahsood
A.S.J-I, Orakzai