

4

**IN THE COURT OF ABDUL BASIT
ADDITIONAL SESSIONS JUDGE-II, ORAKZAI**

Petition No. 08/BA of 2024

“Muhammad Hamza... Versus ... The State”

Order---05
07.02.2024

Mr. Sana Ullah Khan Advocate for accused/petitioner and DyPP for State are in attendance.

Accused/petitioner Muhammad Hamza s/o Gulyas Khan seeks his post arrest bail in case FIR no. 07 dated: 30.01.2024 under section 9-D of KP CNSA of Kalaya Police Station, Orakzai.

Complainant and other police officials were on routine patrolling, meanwhile, two persons riding on motorcycle approached from Zaridar side, who on seeing the police party turned motorcycle back from the spot; that a person sitting on rear seat alongwith plastic sack fell down while driver of the motorcycle escaped from the spot; that the said person was overpowered but nothing recovered from his possession during his body search; that during search of the plastic sack, the police recovered 05 packets of chars wrapped with yellow scotch tape from the recovered sack; that each recovered packets weighed 1000 grams making total quantity of 5000 grams; that 10 grams of chars was separated from each packet and packed in parcels no. 1 to 5 for FSL and the balance chars 4950 grams was amalgamated and packed in parcel no. 6; that accused was arrested and the FIR was registered.

Arguments heard and record perused.

Perusal of the record reveals that recovery of chars was shown to have been allegedly effected from the plastic sack recovered from the spot, however, neither it was in possession accused/petitioner nor any incriminating material has been recovered from his possession during his body search. Though, there is no mandatory provision in the CNSA cases to associate private witnesses, however, their association is also not expressly barred in cases, where there is availability of the public on the spot. In the instant case, record shows that the

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07/02/2024
Abdul Basit
Addl. District & Sessions Judge-II
Orakzai at Baber Mela,
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07.02.2024

recovery has allegedly been made from the accused/petitioner from public place during time when the absence of public is not expected at the spot at the relevant time; therefore, the local police was supposed to associate private witnesses but they did not. FSL report is not received so far to determine that whether the recovered contraband is chars or something else. As per available record, accused/petitioner has not made confession nor there criminal history of his involvement in such like cases. The case property has not been produced before the learned Judicial Magistrate at the time of seeking his custody and thus mandatory provision of section 33 CNSA has been violated. The alleged co-accused has absconded and this is yet to be seen that who was the owner of alleged recovered material/contraband. All of above facts make the case of accused/petitioner one of further inquiry; therefore, keeping him behind the bar would serve no useful purpose.

So, in the circumstances the bail application is accepted and accused/petitioner is admitted to bail provided he furnishes bail bonds in sum of Rs. 500,000/- with two sureties each in the like amount to the satisfaction of this court. Sureties must be local, reliable and men of means. My order is tentative in nature and shall have no bearings on merits of the case. Copy of this order be placed on judicial and police files.

Requisitioned record be returned to the quarter concerned and file of this court be consigned to record room after necessary completion and compilation.

Announced
07.02.2024


(Abdul Basit)
Addl. Sessions Judge-II/JSC,
Orakzai