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

Petition No. 16/4 of 2024

"Wahidullah... Versus ... The State"

Order---05

19.03.2024

Mr. Javid Muhammad Panji Advocate for accused/petitioner and DyPP for State are in attendance.

Accused/petitioner Wahidullah s/o Alam Gul seeks his post arrest bail in case FIR no. 115 dated: 27.12.2023 under section 9-D of KP CNSA of Kalaya Police Station, Orakzai.

Arguments heard and record perused.

Complainant and other police officials laid a barricade upon receiving spy information regarding the smuggling of chars, meanwhile, a motorcar of black color approached from Utman Khel side and was stopped for the purpose of search; that two persons sitting in the car were deboarded and bodily searched, however, nothing incriminating recovered from their personal possession; that during search of the vehicle and as per information of the spy, the police recovered 07 packets of chars wrapped with yellow scotch tape from the cavity made above and over the right side of tyre, which Wahidullah has shown his ownership, whereas, recovered 06 packets of chars wrapped with yellow scotch tape from the cavity made above and over the left side of tyre, which Muhammad Haroon has shown his ownership; that all the recovered packets weighed 1000 grams each making total quantity of 13000 grams; that 10 grams of chars each was separated from each packet and packed in parcel no. 1 to 13 for FSL and the balance chars was packed in parcel no. 14. Accused were arrested and the FIR was registered.

This is tentative assessment of record available on file as deep appreciation of case file is neither required nor warranted at this stage. The learned counsel for accused/petitioner at the very outset taken a plea of rule of consistency on ground that accused/petitioner is also juvenile and entitled to be treated at par with the co-accused Muhammad Haroon, who has already been released on bail by august Peshawar High Court. Admittedly, the rule of consistency can be extended to co-accused having similar role,

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Abdul Basit
Addl: District & Sessions Judge-II
Orakzai at Baber Mela,
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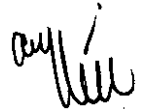
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however, in the instant case there is difference of ages of both the accused, which plays vital and significant role to treat a juvenile offender under The Juvenile Justice System Act, 2018. Although, the birth registration certificate submitted by accused/petitioner is postdated and was prepared after the registration of case, whereas, as per card of arrest his age is shown as 22/23 years, which factor shall be determined during trial, however, if his birth certificate is still relied, even then, he was more than sixteen years of age at the time of commission of offence and has to be dealt with under sub-section 4 of section 6 of the Act *ibid* for the purpose of his release on bail. Since, offence with which accused/petitioner is charged with carries the maximum punishment of death, which is heinous offence within the meaning of clause "g" of section 2 of the Act *ibid*, while, as per his alleged birth registration certificate, he was more than sixteen years of age at the time of commission of the offence; therefore, he cannot claim bail as a right within the meaning of sub-section 4 of section 6 of the Act *ibid*.

Besides above, a huge quantity of chars has been recovered from the vehicle driven by accused/petitioner, whereas, the FSL report in respect of the recovered contraband is also in positive. It is also observed that due to the relaxation of bail provision to the juveniles, a general practice is prevailing in the area that criminals are involving the juveniles in the commission of heinous offenses/ crimes so that in case of their arrest, they may be released on bail by availing the benefit of juvenility. Since, the accused/petitioner is found transporting a huge quantity of chars, the punishment of which falls within the restrictive clause of section 497 Cr.PC; therefore, this Court is not inclined to extend him the concession of bail for above reasons, hence, the application is **dismissed**.

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

Announced
19.03.2024


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