

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

Petition No. 33/04 of 2024

“Samar Khel ... versus ... The State”

Order---03

03.05.2024

Mr. Abid Ali, advocate for accused/petitioner is present.

Sr.PP for the State is in attendance.

Samar Khel s/o Wash Khel, accused/petitioner, seeks his post arrest bail in case FIR no. 20 dated: 31.03.2024 under section 9-D of KP CNSA of Kalaya Police Station, Orakzai.

Concise facts of the case are that complainant and other police officials were on patrolling, when in the meanwhile, two persons riding on motorcycle approached to the spot, who on seeing the police party tried to turn motorcycle but they were overpowered; that the person sitting on pillion seat was having a red color sack in his lap, which was searched and the police recovered 05 packets of chars wrapped with yellow scotch tape from it; that each recovered packet 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; that the balance chars 4950 grams was amalgamated and packed in parcel no. 6 while the recovered sack was packed in parcel no. 7; that the occurrence was filmed and saved in USB, which was packed in parcel no. 8; that both the accused claimed the recovered contraband to be their ownership; that person sitting on pillion seat disclosed his name as Samar Khel and driver of motorcycle disclosed his name as Fazal Malik; that an unregistered motorcycle CD-70 engine no. US70194399 chasses no. US 70194399 was also taken into possession and accused were arrested, hence, FIR.

Arguments heard and record perused.

Viewing the valuable arguments advanced by learned counsel for parties and record on file, this is held that although accused/petitioner is directly charged for transporting the chars, however, in spite of lapse of more than one month period, no FSL report has been received to ascertain that as to whether the

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recovered contraband was chars or otherwise, which makes it a case of further inquiry. Although, 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 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. As per available record, accused/petitioner has not made confession nor there criminal history of his involvement in such like cases. Importantly, the co-accused Fazal Malik has already been released on bail by learned District & Sessions Judge-Orakzai on bail having similar role; therefore, accused/petitioner is also entitled for release on of bail on principle of rule of consistency.

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. 100,000/- 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
03.05.2024


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