

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

Petition No. 34/4 of 2024

"Hashmatullah ... 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.

Hashmatullah s/o Khana Gul, accused/petitioner, seeks his post arrest bail in case FIR no. 26 dated: 21.04.2024 under section 9D KP CNSA of Kalaya Police Station, Orakzai.

Precise facts of the case are that complainant and other police officials on receiving a spy information about smuggling of chars laid a barricade, when in the meanwhile, a motorcycle approached from Syed Khaleel side, which was stopped for the purpose of checking; that rider of the motorcycle was having plastic sack in shape of bag; that on the search of sack, police recovered 20000 grams chars garda out of which 10 grams of chars was separated and packed in parcels no. 1 for FSL and the balance chars 19990 grams along with sack was packed in parcel no. 2; that spot proceedings were filmed and saved in USB, which was packed in parcel no. 3; that sky blue color Honda 125 motorcycle without registration, chasses and engine numbers was also taken into possession accused the accused was arrested, hence, the FIR.

Arguments heard and record gone through.

Contents of report though provides that though accused/petitioner has been shown transporting a huge quantity of chars on motorcycle, however, this is strange to note that despite lapse of more than ten days, the FSL report has not been received so as to determine that whether the alleged recovered contraband was actually the chars or otherwise, which makes it a case of further inquiry. Though there is no mandatory provision in such like 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

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made from the accused/petitioner from public place; therefore, the local police was supposed to associate private witnesses but they did not. According to card of arrest and school documents, the accused/petitioner is under the age of 18 years, who also deserves his release on bail being a juvenile. Besides, his roll number slip and date sheet also provides that he is taking his board examination; therefore, refusal of bail would stake his future. As per site plan, local police had allegedly arranged a barricade on straight road, which is apparently visible to the accused from considerable distance but this is strange that accused/petitioner having conscious of fact of carrying huge quantity of the chars headed towards them that needs to be sort out after recording of pro and contra evidence. As per available record, accused/petitioner has no history of his involvement in such like cases. Importantly, perusal of the recovery memo available on file, the copy is placed on instant bail petition, also provides that same is not signed by a single marginal witness, which fact coupled with facts above make it a case 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 the sum of Rs. 300,000/- 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 is returned to the head-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, Orakzai