

1999 SCMR 1271

[Supreme Court of Pakistan]

Present: Raja Afrasiab Khan, Sh. Ijaz Nisar and Sh. Riaz Ahmed, JJ

GUL ZAMAN---Petitioner

versus

THE STATE---Respondent

Criminal Petition No.391-L of 1998, decided on 18th Decembers, 1998.

(On appeal from the judgment, dated 24-6-1998, of the Lahore High Court Lahore, passed in Criminal Miscellaneous No.967-B of 1998).

Per Sh. Ijaz Nisar, J.---

(a) Criminal Procedure Code (V of 1898)---

---Ss. 496, 497 & 498---Control of Narcotic Substances Act (XXV of 1997), Ss. 9, 15 & 51--- Bail---Notwithstanding the bar contained in S. 51 of the Control of Narcotic Substances Act, 1997 bail could be granted to an accused person---Applicability of Ss. 496, 497 & 498, Cr.P.C. was not totally barred in respect of cases under the said Act---Prohibition was only regarding the offence punishable with death thereunder while bail could be allowed in other suitable cases.

Mst.. Fahmida v. The State 1997 SCMR '947; Altaf Hussain v. State PLD 1985 Lah. 10 and State v. Qaim Ali Shah 1992 SCMR 2192 ref.

(b) Criminal trial---

---- Administration of justice---Accused is presumed to be innocent till he is proved guilty beyond reasonable doubt by the prosecution and he, therefore, during the trial stands on a different footing than the accused against whom a competent Court has returned the verdict of guilt as in the latter case the presumption of innocence would not arise.

Per Sh. Ijaz Nisar, J.; Raja Afrasiab Khan, J. concurring---

(c) Criminal Procedure Code (V of 1898)---

---S. 497---Control of Narcotic Substances Act (XXV of 1997), Ss. 9 & 15-- Constitution of Pakistan 1973, Art.185 (3)---Bail, grant of---Accused was behind the bars for about one and a half years and no charge had yet been framed against him---Incomplete challan had only been submitted in the Court-- Mere accusation against accused could not be equated with indictment-- -Bail could not be denied to accused arrested only on suspicion simply for the reasons that the offence shown in the F.I.R. was punishable with death---No incriminatory recovery had been effected from the accused, nor any other material was available to connect him with the commission of the offence-- Legality and evidentiary value of the statement made by co-accused before the raiding party implicating the accused was to be considered by the Trial Court-- Good prima facie case having been made out for grant of bail, petition for leave to appeal was converted into appeal and was allowed admitting the accused to bail.

Muhammad Ashraf v. The State PLD 1986 SC 42; PLD 1997 Unreported Statutes, p. 527; Kh. Fakharuddin v. Hasinuddin Qureshi and 3 others PLD 1980 Lah. 778; Mst. Fahmida v. The State 1997 SCMR 947; Altaf Hussain v. State PLD 1985 Lah. 10; State v. Qaim Ali Shah 1992 SCMR 2192; Tariq Bashir v. The State PLD 1995 SC 34; Amir v. The State PLD 1972 SC 277; Khalid Saigol v. State PLD 1962 SC 495; Nadra v. Jamiat Khan and others PLD 1968 SC 310; Muhammad Ayub v. Muhammad Yaqub PLD 1966 SC 1003 and State of Rajasthan v. Balchand AIR 1977 SC 2447 ref.

Per Sh. Riaz Ahmed, J., Contra---[Minority view].-----

Nisar Ahmed v. The State PLD 1971 SC 174; Khalid Saighal's case PLD 1962 SC 499; Riasat Ali v. The State PLD 1968 SC 353; Moula Bakhsh v. The State 1971 SCMR 196; Shahab Khan

v. The Crown PLD 1956 FC 117; Muhammad Nawaz v. The State 1968 SCMR 683 and Sultan Khan v. Amir Khan and others PLD 1977 SC 642 ref.

Per Sh. Riaz Ahmed, J.---

(d) Evidence---

---"Corroboration"---Connotation---Corroboration means and consists of any circumstance which would tend to connect a person with the commission of crime.

(e) Criminal Procedure Code (V of 1898)---

---S. 497(1)---"Reasonable grounds"---Connotation---Expression "reasonable grounds" occurring in S. 497(1), Cr.P.C. means the grounds which appeal to a reasonable person.

(f) Criminal Procedure Code (V of 1898)----

---S 497/498---Grant or refusal of bail in non-bailable cases---Guiding principles stated.

The grant or refusal of bail in a non-bailable case is a matter of discretion with the primary Court, which is inquiring into or trying the case. Discretion has to be exercised in a judicial manner with due regard to the circumstances of each case without any propensity to unnecessarily jeopardize the liberties of the people, who are accused of the criminal offences. For offences punishable with death, the discretion is subject to the limitation that bail is not to be allowed to an accused person if it is shown that there are reasonable grounds to believe that he has committed such an offence. In order to ascertain whether reasonable grounds exist or do not exist, the Courts do not have to probe into the merits of the case. They have only to look at the material placed before them by the prosecution to see whether some tangible evidence is available against the accused person, which, if left un rebutted, may lead to the inference of guilt. Reasonable grounds are not to be confused with mere allegations or suspicion nor with tested or proved evidence which the law requires for conviction of a person for an offence.

The Courts while determining whether reasonable grounds exist or not, are under obligation to assess prosecution evidence tentatively and definite finding cannot be given for avoiding prejudice to be caused to the prosecution or the defence, as the case may be. A Court cannot have resort to an elaborate sifting of evidence and it has to go by its assessment of the common course of natural events human conduct and public and private business in their relation to the facts of the particular case.

The other guiding principles are that the bail cannot be withheld as punishment. As the heinousness of offence is also no ground to withhold the concession of bail if, prima facie, there are reasonable grounds to believe that the person is not guilty of commission of the offence. Furthermore, it is to be ensured that a person accused of the commission of offence faces his trial and does not defeat the same by running away or by destroying or suppressing the evidence against him and such person should not be let loose on the society so as to think that he might just as well hang a sheep as for a lamb. As question of delay is concerned, before the insertion of provisos (a) and (b) into section 497, Cr.P.C., by the Legislature, the grant of bail on the ground of delay was again a question of fact, which had to be determined in each case according to its own facts.

(g) Words and phrases---

----- Reasonable grounds "---Connotation.

Nisar Ahmed v. The State PLD 1971 SC 174 and Khalid Saighal's case PLD 1962 SC 499 ref.

Sardar Muhammad Ishaq Khan, Senior Advocate Supreme Court with Tanvir A. Khan, Advocate-on-Record (absent) for Petitioner.

Tanvir Bashir Ansari, Deputy Attorney-General for the State.

Date of hearing: 6th November, 1998