

Drugs Offences: Conviction and Acquittal, The Views of a Practitioner

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Abstract

The debate on the constraints of investigation management in all kind of offences, especially drugs and terrorism, is getting serious day by day in the country. A sort of blame-game is noticed in the statements coming from the senior offices of the law-enforcement agencies and the important wings of the criminal justice system. Few have given a serious thought to analyze the real underlying causes for low rates of arrest, low rates of conviction and the poor state of investigation and prosecution in all such matters. The article provides the views and observations of a practicing lawyer wherein an effort is made to briefly describe the role of agencies responsible for anti-narcotics action and the legal aspects of the various constraints in dealing effectively with drugs offences.

Keywords

Anti-Narcotics Force, Quran, Control of Narcotics Substance Act, Acquittal, Supreme Court, Trial Accused

Introduction

The Control of Narcotics Substances Act, 1997 is a new law relating to Narcotic Drugs, Psychotropic Substances, and controls the production, processing and trafficking of such drugs and substances. It also includes the provisions of previous laws and contains several new provisions like the death penalty for trafficking and financing of narcotics drugs, and forfeiture of drug-generated assets. The Anti Narcotics Force Act, 1997 reflects constitution, functions, powers etc of Anti Narcotics Force. But despite all of these laws still, in the majority of narcotics cases in Pakistan, the accused are acquitted, and there are several reasons which have been briefly discussed in this article. This article is based on the practical observations of the practitioners in the criminal justice system who have a direct interaction with the cases of drug offences.

Practitioners in the criminal justice system have a strong biased perspective that the reason for acquittal in cases of drugs offences is basically the lenient view of the court on the principle of law that the accused is the favorite child of the court and a single infirmity which creates a doubt in a prudent mind is sufficient for the acquittal of the accused. As held by the Supreme Court of Pakistan in the case titled "Faheem Ahmed Farooqui Versus The State" in a cited case 2008 S C M R 1572:

Appreciation of evidence---Benefit of doubt---Principles---For the purpose of giving benefit of doubt to an accused person more than one infirmity is not required---Single infirmity creating reasonable doubt in the mind of a reasonable and prudent mind regarding the truth of the charge makes the whole case doubtful---Merely burden on the accused to prove his innocence does not absolve the prosecution from its duty to prove its case against the accused beyond any shadow of doubt.

Besides this, many other cogent and plausible reasons are generally quoted, like lack of facilities with police, strength of police, engagement of police in other duties, incompetency of police, and delay in the reports of Forensic Science Laboratory, etc. There are several international instruments which are ratified by Pakistan but their practical implementation is very limited in the field of narcotics and such like heinous offences which cannot be stopped effectively.

History of Narcotics Control in Pakistan

In 1957 the Pakistan Narcotic Board (PNB) was established that was under the control of Revenue Division to fulfill the Pakistan's obligations under the International Opium Convention of 1925. On March 8, 1969 the Custom Act was enacted. This law also contained anti-narcotics measures. Pakistan was a party to the single Convention on Narcotic Drugs, 1961. On August 15, 1965 Pakistan ratified the said convention. To meet its obligations under the said convention, the Federal Government of Pakistan, through a declaration dated March 8, 1973, reconstituted and renamed the Pakistan Narcotic Board (PNB) as Pakistan Narcotic Control Board (PNCB). The Anti Narcotics Task Force (ANTF) was established in December 1991. In February 1995, the Pakistan Narcotic Control Board (PNCB) and the Anti Narcotics Task Force were merged into a single organization called as Anti Narcotics Force (ANF), which is now the premier law enforcing agency in the field of narcotics control in Pakistan and also combating the narcotics and controlled substances which enter into Pakistan mainly through the long porous border with Afghanistan. On 05.05.1995 the Government of Pakistan promulgated an Ordinance namely Control of Narcotics Substances Ordinance, 1995 to control the production, processing and trafficking of narcotics drugs and substances as well as to regulate the treatment and rehabilitation of narcotic addicts and for matters connected therewith and incidental thereto. The said ordinance was repeatedly promulgated till 1997. On July 11, 1997 this ordinance was presented in the parliament and it was enacted as Act of Parliament namely Control of Narcotics Substance Act, 1997. This Act not only encompasses all provisions of previous laws such as prohibition (Enforcement of Hadd) Order, 1979, Drugs Act, 1976, Pharmacy Act 1967, Dangerous Drugs Act, 1930, Opium Act, 1978 (1 of 1978), but also contains several new provisions like death penalty for trafficking and financing

of narcotic drugs and forfeiture of drug generated assets. Such harsh punishments were not included in old laws. Anti Narcotics Forces Act, 1997, which reflects constitution, functions, powers etc. of Anti Narcotics Forces was also passed by the National Assembly and came into force on April 14, 1997.

Ratified International Conventions by Pakistan for the Control of Narcotics

Up till now Pakistan has ratified the following United Nations conventions and regional bilateral treaties.

1. Single Convention on Narcotic Drugs 1961 as amended by the 1972 protocol.

The Economic and Social Council of the United Nations, by resolution 689 J (XXVI) of 28 July 1958, decided to convene in accordance with Article 62, paragraph 4, of the Charter of the United Nations, and with the provisions of General Assembly resolution 366 (IV) of 3 December 1949, a plenipotentiary conference for the adoption of a single convention on narcotic drugs to replace by a single instrument the existing multilateral treaties in the field, to reduce the number of international treaty organs exclusively concerned with control of narcotic drugs, and to make provision for the control of the production of raw materials of narcotic drugs. The United Nations Conference for the Adoption of a Single Convention on Narcotic Drugs met at the United Nations Headquarters from 24 January to 25 March 1961, where in the seventy-three States were represented by representatives at the Conference including Pakistan.

2. United Nations Convention on Psychotropic Substances 1971

The Economic and Social Council of the United Nations, in accordance with Article 62, paragraph 4, of the Charter of the United Nations, and with the provisions of General Assembly resolution 366 (IV) of 3 December 1949, decided, by resolution 1474 (XLVIII), to convene a conference of plenipotentiaries for the adoption of a Protocol on Psychotropic Substances. The United Nations Conference for the Adoption of a Protocol on Psychotropic Substances met in Vienna from 11 January to 21 February 1971. In this conference 71 states were represented by representative at the conference including Pakistan.

3. United Nations Convention Against Illicit Trafficking in Narcotic Drugs and Psychotropic Substance 1988 and Subsequent United Nation Resolutions, in particular the United Nation General Assembly's 20th Special Session Resolution s-20/4b.

The Economic and Social Council, by its resolution 1988/8 of 25 May 1988, having recalled the preparatory work undertaken pursuant to General Assembly resolution 39/141 by the competent United Nations organs, decided "to convene, in accordance with Article 62, paragraph 4, of the Charter of the United Nations and within the provisions of General Assembly resolution 366 (IV) of 3 December 1949, a conference of plenipotentiaries for the adoption of a convention against illicit traffic in narcotic drugs and psychotropic substances". By its decision 1988/120, also adopted on 25 May 1988, the Council decided that the Conference should be held at Vienna from 25 November to 20 December 1988 and that the Secretary-General should send invitations to participate in the Conference to those who had been invited to participate in the International Conference on Drug Abuse and Illicit Trafficking, held at Vienna from 17 to 26 June 1987. Pakistan was also one of the members of the commission.

4. South Asian Association For Regional Cooperation (Saarc) Convention On Narcotic Drugs And Psychotropic Substances 1990.

SAARC Convention on Narcotic Drugs and Psychotropic Substances, which was signed on 23rd November 1990 came into force on 15th November 1993; also ratified by the Pakistan.

5. Protocol On Drug Matters With Economic Cooperation Organization (Eco) Countries.

Extradition treaties concluded by the British government with 19 countries were adopted by Pakistan. These countries are Argentina, France, Portugal, Austria, Greece, San Marino, Belgium, Iraq, Switzerland, Colombia, Liberia, USA, Cuba, Luxembourg, Yugoslavia, Denmark, Monaco, Ecuador and the Netherlands respectively. Pakistan has directly concluded Extradition Treaties with Australia, Iran, Maldives, Turkey, Egypt, Italy, Saudi Arabia, Algeria and Iran

Quranic Injunctions Regarding Prohibition of Intoxicants

The severity and intensity of the narcotics abuse is established from the fact that the said is prohibited in Islam and Quran, the last Holy Book. The Quran teaches the lesson that narcotics are not good and should be condemned. For example it is cited in chapter V verses 90-91 in the Holy Quran in the following words: "O ye who believe! Intoxicants and games of chance and idols and divining arrows are only infamy of Satan's handiwork. So leave it aside in order that you may succeed. Satan seeketh only to cast among you enmity and hatred by means of intoxicants and

games of chance, and to turn you away from the remembrance of Allah, and from prayers. Will you then desist?" Besides this, there is also a *Hadith* (saying of the Holy Prophet) (Peace be upon him) that "All intoxicants are forbidden". As Pakistan is an Islamic Republic and it is provided in its Constitution that all laws which are repugnant to the injunctions of the Holy Quran and *Sunnah* (the way of the Holy prophet) are having no force in the eyes of law. The business of narcotics is prohibited in the Holy Quran and Sunnah, so the doing of the said business creates two sorts of responsibility on the person, one regarding the punishment provided by the State law and the other is a religious obligation as it is an offence in Islamic law.

Brief Introduction to Law-Enforcement Agencies Controlling Narcotics in Pakistan

There are several agencies, which are working in Pakistan in order to eliminate the offence of narcotics such as the agencies below:

1. The Anti Narcotics Force (ANF).

The ANF has been assigned the central role in combating drug trafficking by the Control of Narcotics Substances Act, 1997. The ANF has the primary responsibility for interdicting the production, smuggling, trafficking and abuse of narcotics and illicit psychotropic substances. Through its 5 Regional Directorates, headed by Brigadier level officers supported by officers and staff seconded from the Army, and its Special Investigation Cell (SIC), it collects intelligence, and is responsible for arrests, drug seizure, investigation and prosecution of offenders. Seizures of drug-generated assets and curbing of money laundering complements the ANF's enforcement role. Apart from this the ANF is also responsible for demand reduction programmes. The ANF functions under the Ministry of Narcotics Control NC and is headed by a Director General who is a serving military officer on deputation from the Army. The size of the ANF has expanded in recent years, the number of staff increasing from less than 1,000 in 1996 to 2,400 in 2007. The force's staff comprises of 47 percent on secondment from the Army and other agencies and the remainder is from the ANF integral cadre, which is in the process of being expanded to 3100.

2. Frontier Corps (FC)

These paramilitary organizations comprising a number of wings (roughly equivalent to a regiment in size and configuration) are deployed along Pakistan's border with Afghanistan in the provinces of Khyber Pakhtunkhwa and Balochistan. They are also deployed on Pakistan's border with Iran in the

Province of Balochistan. Their primary function is to guard the border areas but they also undertake counter drug-trafficking operations. However, their investigative capacity needs to be enhanced. The Inspector-General of the FC reports to the Federal Ministry of Interior. The ANF has delegated anti-narcotics powers to the FC.

3. Pakistan Customs

Pakistan Customs reports to the Federal Board of Revenue, which is part of the Ministry of Finance. There are two main arms of this service, both of which have drug control within their ambit. The Intelligence and Investigation Division has a central intelligence function and has investigative offices throughout the country. The second arm, comprised of various Customs Collectorates, is also spread over the country. Both arms employ specialist drug units, which vary in size. The larger units are normally located at Pakistan's international ports and airports. The customs frontiers consist of 15 entry and exit points.

4. Pakistan Coast Guards

Exact number of personnel assigned to the Pakistan Coast Guards remains classified. Pakistan Coast Guard is responsible for security of Pakistan's coastline. The Director General of the Coast Guards, a Brigadier on secondment from the Army, reports to the Ministry of Interior. Under the present circumstances the Coast Guard is bereft of most of its original mandate and is concentrating mainly on drug trafficking. Therefore, it is proposed that the Coast Guard should be placed under the administrative control of ANF during the peacetime.

5. Police and Excise

The Provincial Police Forces and the Excise Departments have a duty to check the trafficking and distribution of drugs within the country, especially at the consumption level. This is an important function because the ANF's role is related to high value consignments of narcotic drugs as they do not have the manpower to police the streets for peddlers.

6. Maritime Security Agency (MSA)

The MSA was set up in 1986 and has approximately a 2,500 member paramilitary force. The MSA is responsible for patrolling the Exclusive Economic Zone in co-operation with the Navy and the Army-manned Coast Guard, which includes narcotics interdiction.

7. Rangers

The Pakistan Rangers provide for the internal security of the country. Organized at the Provincial level and subordinate to the Ministry of Interior, the Rangers are commanded by general officers from the army. These forces are responsible for internal security duties, which include interdiction of narcotic drugs and psychotropic substances.

8. Airport Security Force (ASF)

The ASF is headed by a Brigadier on secondment from the army. It has its presence on all the airports of the country and though the primary function of the force is to thwart any attempt of weapons or explosive smuggling on the aircrafts and the general security of the airports, it also helps in detection of narcotics trafficking through its baggage screening mechanisms at different airports.

Why Accuseds are Acquitted in Narcotics Cases

There are numerous reasons for the acquittal of the accused(s) in narcotics case e.g. poor investigation, lack of facilities with the police, incompetence of police officials, delay in trial, and delay caused in the report of Forensic Science Laboratory regarding the contraband due to non-availability of the facility in every District. The reasons for the acquittal of accused(s) in narcotics cases are discussed in this paper in light of case studies as no other empirical research or data is available at any forum or office of the criminal justice system. It is pertinent to mention here that the primary duty of the police is to eliminate all sorts of crimes from the society including narcotics related offences. The selling, purchasing and smuggling of narcotics is one of the heinous offences and if the quantity exceeds one kilogram *charas* (Cannabis) its punishment under the Statute i.e. section 9 (c) of the Control of Narcotics Substances Act, 1997 is the death penalty which is capital punishment. Despite this fact the incidence of the crime is not reduced, due to the lenient view of the Courts by acquitting the accused, and habitual offenders are encouraged to repeat the crime time and again. Though the role of police is very important, unfortunately there are a number of legal, financial and administrative constraints that prevent the police from focusing on one heinous crime effectively. Police difficulties are however, not the topic of this paper. After the new police order 2002, the prevention and investigation branches of the police are fully separated and the new controversial reforms have made the work of the police more difficult. Moreover, the war on terror has badly engaged the local police and little concentration is given to other street crimes and drugs offences. Such legal, financial and department constraints have been fully discussed by Fasihuddin (2010) as far as drugs offences are concerned.

To detect the crimes and provide exemplary punishment to the offenders it is incumbent that the case should be properly investigated and proper investigation will be only possible when all the facilities for investigation are given to the police officials, but unfortunately they have no such facilities and in majority cases accused(s) are acquitted. For example, whenever the police arrest a person with narcotics it is one of the requirements that the same was sealed in parcel at the spot and weighed on the spot. But unfortunately whenever police arrest the accused, often they have no investigating kit (as required under Police Rules 1934, Rule No. 25.58 Provision of Investigation Bag to the Investigation Officer) along with them and the parcels are not prepared on the spot, but rather are prepared inside the police station, which makes the case of the prosecution highly doubtful and looks like that the case is planted against the accused and that benefit is always extended in favour of the accused and accused are acquitted due to poor investigation.

Case Law Study of Narcotics in Pakistan and Reasons of Acquittal

From the perusal of case law study of narcotics it is transpired that in a majority of cases accused are acquitted due to lack of evidence. Judges extended benefit of doubt in favour of the accused and due to the said lenient views, the habitual offenders involved in the business of narcotics are encouraged and doing their businesses without any fear. Reference is made to cases where accused are admitted to bail and later acquitted for different reasons. Despite the fact that section 51 of Control of Narcotics Substance Act, 1997 restricts the grant of bail in the following words i.e.

Section 51: "No Bail to be Granted in Respect of Certain Offences". Notwithstanding anything contained in Section 496 and 497 of the Code of Criminal Procedure, code 1898 (V of 1898), bail shall not be granted to an accused person charged with an offence under this Act or under any other law relating to Narcotics where the offence is punishable with death. In the case of other offences punishable under this Act, bail shall not be normally granted unless the court is of opinion that it is and against the security of substantial amount."

There are two stages faced by the accused arrested in narcotics cases, one is bail and the second is the stage of trial. First the position of the accused at bail stage is discussed in regard to why he/she is released on bail. It should be clearly mentioned that there are numerous reasons laid down by the superior courts of Pakistan as fixed yardsticks for inferior courts to decide the bail petition of the accused of narcotics.

1. Accused Not Required To An Investigation Agency

Accused not required for investigation court is always of the view that when the accused is not required to the police for further investigation and the offence does not fall in the ambit of prohibitory clause then why accused are not released on bail in case 2007 YLR 3144.

2. Age of Accused

Age of the accused is one of the important factors and section 497(1) first proviso of Code of Criminal Procedure which is applicable on Narcotics Courts *mutis mutanti* provides in the following words: "that the court may direct that any person under the age of sixteen years or any sick or infirm person accused of such an offence be released on bail". It was held in cited case 2005 P.Cr.L.J 1245 that Accused has been shown as a boy, but his exact age had not been mentioned keeping in view the young age of accused, the quantity of the charas (cannabis) and the, investigation, bail has allowed to accused. In another case cited 2006 YLR 207: Tender age of accused was not denied and his status of being regular student was proved through Roll Number slip, accused was admitted to bail. In addition to this again it was held 2002 MLD 1422 that accused at the time of commission of offence was hardly 13 years, documents filed by accused in support of his are fraudulent and their genesis was not disputed in any manner. Juvenile Justice System ordinance 2000 as well as Sindh Children Act 1955, having come to rescue of accused, he was entitled to bail. Section 10-sub clause 5 of the Juvenile Justice System Ordinance 2000 provides "where a child under the age of fifteen years is arrested or detained for an offence which is punishable with imprisonment of less than ten years, shall be treated as if he was accused of commission of a bailable offence."

It is worth mentioning here that bailable offences are those offences where the bail is granted as a matter of right. Moreover, section 10 sub clause 7 of the Juvenile Justice System 2000 provides:

notwithstanding anything contained in the code and except where a juvenile court is of the opinion that the delay in the trial of the accused has been occasioned by an act or omission of the accused or any other person acting on his behalf or in exercise of any right or privilege under any law for the time being enforced, a child who, for commission of an offence, has been detained, shall be released on bail (a) if, being accused of an offence punishable with death has been detained for such an offence for continuous period exceeding one year and whose trial for such an offence has not been concluded; (b) if, being accused of any offence punishable for imprisonment for life has been detained for such an offence for a

continuous period exceeding six months and whose trial for such offence has not been concluded; or (c), who, being accused of any offence not punishable with death, or imprisonment for life, has been detained for such an offence for a continuous period exceeding four months and whose trial for such an offence has not been concluded; Provided that where a child of the age of fifteen years or above is arrested, the court may refuse to grant bail if there are reasonable grounds to believe that such child is involved in an offence which in its opinion is serious, heinous, gruesome, brutal, sensational in character or shocking to public morality or he is a previous convict of an offence punishable with death or imprisonment for life.

If this will be the position that law is so much more lenient in respect of juvenile offenders, organized criminals will use the juveniles for transportation of narcotics for the reason that they know if they will be arrested the court will adopt a lenient view and the statute also provides a lenient view regarding bail as well as regarding punishment as no capital punishment is awarded to the accused if he is juvenile under section 12 of the Juvenile Justice System Ordinance. However, this is a debatable point and it was due to such reasons that the Lahore High Court abolished the Juvenile Justice System Ordinance in 2005. The civil society and international community, such as Amnesty International, strongly reacted on this court decision and criticized at length the arguments mentioned in the court's decisions. Owing to this reaction the Supreme Court of Pakistan, later on, restored the JJSO in the best interest of the child. However, since the data on juvenile offending is rarely published by any public agency, therefore there has been no empirical evidence to support any of the sides. There is a dire need of research to find out the implications of the juvenile justice system, welfare model, on juvenile offending.

3. Delay in Conclusion of Trial

Criminal Amendment 2011 also provides the time period for the conclusion of trial for different offences. Different periods are provided and if the trials are not concluded and there is no fault on part of the accused then the accused will be released as a matter of right, and it is a problematic situation in Pakistan that no trial is concluded in a stipulated period often, and for obvious reasons benefit is extended in favour of the accused not only at bail stage but also in trial. Police investigation constraints and a mutual blame-game between police and prosecution is one of the major reasons for this.

4. Delay in Sending Of Sample to Chemical Examiner

Section 4 sub clause 2 of the Control of Narcotics Substances (Government Analysts Rules, 2001) provides the time period for sending sample to the Federal Narcotics Testing Laboratory, depending upon the availability for test facilities, either by insured post or through special duly authorized messenger/courier for the purpose not later than 72 hours of the seizure. Unfortunately there is always delay on part of the police to send the sample to Federal Narcotics Testing Laboratory and the court extended this advantage in favor of the accused and often accused are not only admitted for bail but also acquitted from the charges and through this the habitual offenders get encouraged.

5. Delay in Submission of Challan (Final Investigation Report)

Speedy trial is the inalienable right of every accused and section 173 of the Code of Criminal Procedure, 1898 provides that the *challan* shall be submitted by the investigation officer within a period of 14 days after the registration of First Information Report (FIR) and if the investigation is not completed, then an interim report is submitted before the court so that the court may commence the trial. However, this practice is not followed by the police in letter and spirit, as propagated on numerous print and electronic media reports. There are some intrinsic qualitative and quantitative reasons for this in-action on the part of police, e.g. overburden on the investigation officer, lack of special investigation officer, and a number of personal and departmental reasons, though which are not quantified but are generally known to the prosecution, courts media and masses.

6. Failure to Associate Witnesses from the Locality

Section 25 of the Control of Narcotics Substances Act, 1997 exempted the operation of Section 103 of the Code of Criminal Procedure which is for the purpose that whenever police make any recovery from the accused it should be witnessed by the private respectable persons from the locality. This is a safeguard against the arbitrary power of the police officials, but although the statute specifically exempted the operation of 103 Code of Criminal Procedure, still there are cases of the superior courts in which accused was admitted to bail due to non-association of respectable persons of the locality. In a titled case PLD 2002 Supreme Court 590 it was held “ despite earlier information respectable persons of the locality were not associated in recovery proceedings carried out against the accused allegations against the accused, thus, needed

further inquiry. Petition for leave to appeal was converted into appeal and allowed in circumstances and interim bail already granted to the accused was confirmed accordingly.”

7. Delay in the First Information Report (FIR)

It is held by the superior courts in numerous judgments that whenever there is delay in registration of the FIR the benefit of such delay in both cases whether bail or trial must go in favour of the accused on the analogy that whenever there is delay the court is drawn to the inference from such delay that the purpose of delay was to consult and register the FIR with due deliberations and there are chances that the accused might be charged falsely. It was held by the Supreme Court of Pakistan in different cases cited as PLJ 2007 Supreme Court page 6, 2003 SCMR 201, 2003 SCMR 919 and 1995 SCMR 1365 that whenever there is delay in registration of FIR, false implication of the accused cannot be ruled out and the accused were admitted to bail. Even in the latest judgment of the Supreme Court of Pakistan 2011 SCMR 872 it was held that “delay in lodging of FIR---- effect----general rules---delay by itself in lodging of FIR is not material---factor to be considered by the courts are firstly, that such delay stands reasonably explained and secondly that the prosecution has not derived undue advantage through such delay”. From the perusal of this authority it is clear that delay in FIR is a question of fact and can only be decided after recording evidence, but due to the lenient view of the Courts the benefit of such delay is always extended in favour of the accused and be admitted on bail despite the fact that the court at the bail stage had not come to the conclusion that whether such delay was for ulterior motive or otherwise.

8. First Offender

It seems very strange because the superior courts in a case cited 2006 P.Cr.L.J 726, 2005 MLD 1056, 2004 P.Cr.L.J 1670, accused were admitted on bail on the ground that he is first offender while the case cited 2001 MLD 1937 it was held that contention that the accused was a first offender was not relevant for the grant of bail in such cases and bail was dismissed. In my humble opinion I would support the cited judgment 2001 MLD 1937 on the ground that offence is an offence and offence of narcotics is a heinous offence which is dangerous for the whole society and in such offences it will be for the betterment of the society to eliminate such evil, but on the other side when the courts by taking lenient view provide lesser punishment, acquittal of the accused or admittance

on bail would obviously need to encourage the drug peddlers, and they are looking for the poor person of the society by paying a handsome amount in order to fulfill their desires by transporting narcotics from one place to the other.

9. Further Inquiry

It was held in the title case “Muhammad Salman Shafique versus The State” and another by the supreme court of Pakistan in a cited case 2011 SCMR 165 Heroin weighing 1.530 kilogram was recovered from the suit-case of co-accused at the airport---According to said co-accused the suit-case belonged to present accused---Trial Court had granted bail to accused, which had been recalled by High Court vide impugned order---Held, Trial Court had allowed bail to accused after proper examination and appreciation of the facts and the evidence available on record and rightly concluded that the matter required further inquiry--No exception could be taken to the observation so made by the Trial Court---High Court had cancelled the bail violating the principles embodied in S.497(5), Cr. P. C. and the guidelines laid down by Supreme Court relating to cancellation of bail---Order passed by High Court was arbitrary and whimsical and was set aside---Bail was allowed to accused accordingly.

10. Investigation Officer Discharged Accused

In rare cases the police discharge the accused from the investigation and there might be reasons for the said discharge, such as influence of the high officials, taking illegal gratification, accused belonged to some political parties, or relation between the accused and police. But when the police discharge the accused limited option is open with the court to refuse the bail or convict the accused for the reasons that in narcotics cases all the witnesses are police officials so in order to save the time of the Court the judges take these things in consideration and accused are admitted on bail and acquitted.

11. Medical Grounds

Though medical ground is not a ground for the acquittal of the accused, the court keeps this thing in consideration while deciding bail application. For example in a cited case PLD 2006 Karachi 244 it was held that “bail may be granted to an accused on medical ground if his sickness or ailment cannot be properly treated within the jail premises and he needs some specialized treatment and his continuous detention in jail is liable to effect his capacity or is hazardous to his life”.

12. Absence of Mens Rea

Absence of mens rea is a good ground for bail as well for the acquittal of accused. The habitual offenders normally use public transport for the purpose of narcotics and put the narcotics in bags. If nobody asked they are succeeded in their mission and if it was recovered during the search by police they simply took the plea that the bag does not belong to him and nobody took the responsibility of the same and in the passenger vehicles when there are different passengers it would not be possible for the police to charge all passengers for a single bag, so normally they charge a driver or a cleaner of the vehicle and with obvious reason that they have no knowledge that what is in the bag and this plea always favours the accused and the accused is acquitted in the case.

13. Plea of Alibi

The organized criminals before committing an offence first they prepare fake evidence by making their self ill and got admitted in the hospital as a dummy person and whenever his contraband was seized so he took the plea that he has no concern with the said and at the time of occurrence he was admitted in the hospital so the case is decided on the strength of the available evidence and such benefits are always given to the accused and accused are acquitted.

14. Police Officer as Complainant and Investigation Officer

Under the Police Order, 2002 the functioning of the police are devolved into two wings, one is operational and the second investigation. There are some cases when the police arrested the accused along with the narcotics substances so it would not be possible for the operational staff of police to keep the accused till the arrival of the investigation officer on the ground that the investigation officer will only rush to the spot when the FIR was registered and the FIR in such like cases are registered in shape of *murasila* (note written). Numerous reasons are there for a delay like non availability of police staff on the spot, lack of police patrolling mobile, serious law and order situation so the police normally prepare recovery memos, site plan and complete the *Karwai* (Proceedings) by themselves which is not permissible under the Police Order 2002, and the said benefit is extended to the accused who is acquitted despite the fact that he/she has committed the offence.

15. If Accused is a Female

It is within the knowledge of the habitual offenders that females are easily released on bail under Section 497 of the Code of Criminal Procedure because the statute provides that the bail of a female can only be refused if she is

involved in the act of terrorism, financial corruption and murder and such offences are punishable with death or imprisonment for life or imprisonment for ten years. So the habitual offenders are using female for transportation of narcotics drugs from one place to the other on the following reasons firstly; that search were rarely made due to non-availability of female police on pickets, secondly statute provides benefit to female.

The Specific Circumstances in which the Accused are Acquitted

Now the circumstances and situations in which the accused are acquitted are specifically discussed.

1. Accused Not Arrested from the Spot

In cited case 2006 YLR 1834 accused had not been arrested at the spot and no narcotics substances had been recovered from his possession during investigation of the case.

2. Benefit of Doubt

Benefit of doubt is always extended in favour of the accused at bail stage, also at the trial stage on the principle that the accused is the favorite child of the court. In a cited case 2007 YLR 1156, it was held:

Delay of three months in sending case property to chemical examiner despite putting specific question in that regard, delay had not been explained by the investigation officer. Case property, which was obtained at the time of Recovery and was produced in the courts, did not bear signature of witness it seemed to have been foisted on accused, in circumstances, lacunas and discrepancies appearing on record, remained unexplained. After denial of accused, at the time of framing of charge of guilt alleged against him and apart from it, even under the presumed fact of possession, it was for the prosecution to produce and prove relevant and satisfactory evidence beyond reasonable doubt, which had not been done in the case. Giving benefit of doubt, conviction order passed by the trial court was set-aside.

Burden was on the prosecution to prove the charge beyond all reasonable doubts, whereas accused was only to create reasonable doubts in the case of prosecution. Serious doubts having been created in the case of prosecution. Conviction was set-aside. It was held by the Supreme Court of Pakistan in the title case Muhammad Aslam Versus The State. "Benefit of any reasonable doubt created in prosecution case is to be extended to the accused".

3. Delay in Sending Sample to Chemical Examiner

It was held in the title case Muhammad Aslam versus The State 2011 SCMR 820 that delay of more than seven days in sending the samples of narcotics to Chemical Examiner for analysis was also not explained by the prosecution--- Accused was acquitted on benefit of doubt in circumstances.

4. Recovery not Sealed

It was held by the High Court Sindh in the title case Ghulam Hussain and 9 others versus The State in the cited case 2011 P Cr. L J 72 [Karachi] Case property was not sealed and mashirnama (Recovery Memo) bore no signatures of any personnel of ship---Mashirnama did not show that after drawing the samples, signatures of the witnesses had been obtained---Neither the sample was dated nor it was sealed—No shape or the description of the charas (cannabis) had been mentioned in the mashirnama—F.I.R. was totally silent as regard to the drawing of the sample or sending the same for the chemical examination—All the mashirnama in the case were that of Customs Department, who did not have any idea with regard to the weight of the bags which were alleged to have been recovered from the possession of accused persons—No time had been mentioned on the report showing recovery of the contraband items---Whenever a doubt was created, the advantage of that had to be given to the accused, not as a matter of grace, but as a matter of right--- Case was full of contradictions and prosecution had not been able to prove the charges against accused persons beyond reasonable doubt--- Prosecution having failed to prove its case against the accused persons, beyond any reasonable doubt, accused were acquitted of the charges against them.

Recommendations

It is very important for the police officials to think and conduct some small research-studies into why the accused are acquitted and how to plug the legal and administrative loopholes in order to make it difficult for the accused(s) to run away from legal actions and punishment. A police officer dealing with such cases must know that:

1. Role of Police and Legal Knowledge on Narcotics Laws

It is very essential and the important for the high officials of police to eliminate

the narcotics from the society and take some positive steps for role of the police. They should be vigilant and well aware about the narcotics laws in Pakistan as well as:

- i). Why accused are acquitted in narcotics case?
- ii). What are the legal contradictions and problems in the Narcotics laws?

Currently the law which relates to narcotics i.e. Control of Narcotics Substances Act, 1997 is a new law relating to Narcotics drugs, psychotropic substances and controls the production, processing and trafficking of such drugs and substances. All other laws pertaining to Narcotics are consolidated through control of narcotics substances Act, 1997, in the Gazette of Pakistan, extraordinary part –1 July 11 1997. It was held in 2004 Pcr.LJ 746. “Intent and object behind enacting control of Narcotics Substances Act 1997, inter alia, was to control the production, processing and trafficking of Narcotics etc and the act being a special law effective provisions, thereof could not be defeated on technicalities

2. Pakistan is a very important country in the world community regarding narcotic drug issues. Due to efforts of the Federal Government and the Provincial Governments the cultivation of poppy crop has almost been abolished or considerably reduced. However, more and more efforts are needed to make an effective drive against demand of drugs consumption in all its shapes. The currently announced Anti-Drugs Policy needs to be more than words. Its words need to be translated into action. A general scheme of action is proposed by the writer for a better society which is free of drugs. The scheme includes:

- i) A vigorous campaign for awareness in respect of narcotics in general public should be initiated through media and the hazards of use of drug may be communicated to the general public.
- ii) Measures should be taken to prevent illicit cultivation of and to eradicate plants containing narcotic or psychotropic substances, such as opium poppy, coca bush and cannabis plants, cultivated illicitly in that area and the same shall be destroyed.
- iii) Necessary measures should be taken for early destruction or lawful disposal of the narcotic drugs, psychotropic substances.
- iv) The Narcotics plants growing areas should be demarcated as preferential zones for development and the said area should be converted into agricultural/industrial infrastructure as per requirement of the area.

- v) The heroin laboratories should be destroyed in the nearby tribal areas.
- vi) Drug generated assets should be forfeited and money laundering should be checked seriously. There shall be a joint team of the FIA and ANF for this purpose.
- vii) The Government of Pakistan should keep liaison with international officials and agencies such as the United Nations Office on Drugs and Crime, International Narcotics Control Board, International Police, Narcotics Affairs Section (US Embassy), Drugs Enforcement Agency (USA), Foreign Anti Narcotics Community, Drug Liaison Officers in the foreign Embassies, etc.
- viii) Cooperation with other countries should be enhanced to counter narcotics activities, especially Afghanistan, Iran and India.
- ix) The Federal Government and the Provincial Government shall take such measures as they deem appropriate to prevent trade in and the diversion of materials and equipment for illicit production or manufacture of narcotic drugs substances and shall co-operate to this end.
- x) There should be a check on the import cum usage of chemicals (precursors), which can otherwise be used in the production of narcotics. Precursors are to be dealt with strictly as it will make it difficult for poppy-growers to make other deadly drugs.
- xi) The production and supply of narcotic substances for the benefit of mankind, especially its usage in medicine, should be controlled as far as smuggling of the narcotics and weapons are concerned.
- xii) The border with Afghanistan should be strongly controlled.
- xiii) Police and FC should be given greater responsibilities for taking various legal actions against the narcotics substances and drugs smugglers.
- xiv) The government should give soft loans and tax remissions to the people of those areas and families of the addicts.
- xv) Efforts should be made for free schooling, health and other civic facilities, especially in the poppy-growing areas and where the addiction is in higher prevalence.
- xvi) Less costly rehabilitation centres be established at the provincial level, along with prior and proper registration of the addicts.

Conclusion

From the above discussion it is clear that in order to eliminate the heinous crimes associated with narcotics it is obligatory on the Government of Pakistan to take positive steps for the safe society and protect the nation from the evil of narcotics. Moreover, it is also essential that the government should bring some amendments in the narcotics law and make the laws so harsh in order to deter the habitual offenders not to repeat the offence again and some exemplary punishment be awarded to the dealers of narcotics to set an example for others. In my opinion if the Courts will stop adopting the lenient view in regarding the disposal of cases where it is bail or trial, it will definitely decline the graph of crimes pertaining to narcotics.

In recent years, the drug abuse trend has been shifting from traditional plant based drugs to synthetic designer drugs commonly termed as Amphetamine Type Stimulants (ATS). This fast new wave of drugs is becoming very popular amongst the youth and is emerging as a major threat to the South Asian region. These drugs, particularly ATS are spreading rapidly as part of mass youth culture. Changes in social structures in our societies in Pakistan, with an emphasis on success, performance, and fashionable life styles have contributed to the escalating demand and supply of ATS. Due to the common use of synthetic drugs, semi-synthetic drugs and cocaine in Pakistan and destructive effects of such drugs for human beings, some amendments are being proposed in the relevant sections of the Control of Narcotics Substances Act, 1997.

It has been observed that in the Control of Narcotics Substances Act, 1997, there is no time limit for the finalization of inquiries and investigations by the Investigating Officers (IOs), neither in the asset cases nor are the courts bound to complete the trial of assets cases in a stipulated period and hence conviction often takes years. Therefore, certain amendments in Control of Narcotics Substances Act, 1997 to the extent of assets matters having some embargo on the Investigation Officers and Special Courts have been proposed. To make the provisions of the Act, relating to assets freezing/forfeiture more effective, operational and punitive Sections have been added in connection with the limitation of periods of inquiries and investigations by the IOs, Trial Courts and filing appeals before the Appellate Courts. Also, drug cases involving juveniles are not properly prosecuted because public prosecutors have no experience of narcotics cases. Therefore, amendments are being proposed in the Control of Narcotics Substances Act, 1997 for empowering ANF Special Courts to try juvenile drug cases.

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