

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Crl. Misc. No.221-B/2020

Ali Shan

versus

The State

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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13.04.2020

Mr. Shan Zeb Khan, Advocate for petitioner.

Dr. Waseem Ahmad Qureshi, Special Prosecutor, ANF.

Sheraz Sajid, Inspector.

MOHSIN AKHTAR KAYANI, J: Through this criminal miscellaneous petition, the petitioner has prayed for post arrest bail in case FIR No.166, dated 30.10.2018, under Section 9-C read with Section 15, CNSA, 1997, P.S. ANF-RD (North), Rawalpindi.

2. Brief facts as referred in the instant case are that ANF officials on receiving spy information that one Nasir Khan would smuggle huge quantity of contraband in vehicle bearing registration No.LEC-178 started strict searching for the said vehicle. At about 04:20 p.m., on pointation of informer, the said vehicle was stopped, in which four persons were boarded. The said vehicle was being driven by one Nasir Khan while the present petitioner was sitting next to him on front seat. All the four persons were interrogated, who jointly disclosed about presence of 96 kilogram of charas together with 35 kilogram of opium and got recovered the same from secret cavities of the car. Hence, the instant criminal miscellaneous petition for post arrest bail.

3. Learned counsel for petitioner contends that the prosecution case is false, frivolous and baseless as nothing

was recovered from the personal possession of petitioner and as such, petitioner is innocent and has malafidely been involved in the instant matter; that neither the petitioner was driving the vehicle nor the vehicle is registered in his name, rather the recovery of alleged contraband has been associated with the petitioner in malafide intention; that the petitioner is previously non-convict and has never been involved in any case prior to the instant case; that the investigation of the case is completed and the petitioner is no more required for the purpose of investigation; that the petitioner is ready to furnish sufficient surety to the satisfaction of the Hon'ble Court if he is released on bail.

4. Conversely, learned Special Prosecutor ANF opposed the instant bail application and contended that recovery of contraband from secret cavities of the vehicle has been effected on the pointation of petitioner and co-accused; that the positive report of NIH Laboratory further establishes the prosecution case against the petitioner and as such, petitioner has failed to show malafide or enmity on the part of prosecution for his false implication in the instant matter; that challan has been submitted and trial is in progress, which is likely to be concluded in near future.

5. Arguments heard, record perused.

6. The tentative assessment of record reveals that petitioner along with three other co-accused persons were allegedly transporting heavy quantity of contraband on 30.10.2018, who were intercepted by the ANF authorities. On disclosure of petitioner, who was shown to be seated on front passenger seat of the vehicle, and other co-accused persons, recovery of 96 Kg of charas and 34 Kg of opium was made

from the secret cavities of vehicle bearing registration No.LEC-178 and accordingly, samples were taken for the purpose of chemical examination, whereas the positive result of chemical analysis further substantiates the recovery of charas and opium.

7. The Investigating Officer contends that challan has been submitted in Court on 17.12.2018, followed by framing of charge on 15.01.2019 and even three (03) prosecution witnesses have recorded their statements before the learned Trial Court, but they have not been cross examined by the defence counsel, resultantly, the trial has been delayed due to fault on the part of accused persons.

8. We have gone through the record and there is no cavil to the proposition that such a heavy quantity of charas and opium falls within the purview of Section 9-C CNSA, 1997, which otherwise provides death sentence, whereas Section 51 of CNSA, 1997 ruled out the consideration of Sections 496 and 497 of Cr.P.C. and the case in hand is not a fit case for grant of bail as the recovery on the pointation of accused persons and petitioner from vehicle, prima facie, suggests that petitioner was involved in the transportation of contraband, for which capital sentence is provided, therefore, while considering the bar contained in Section 51 of CNSA, 1997, no bail could be granted in respect of these offences, even the offence falls within the prohibitory clause of Section 497 Cr.P.C.

9. The trial has been commenced and delay is attributed to petitioner and his co-accused persons. In such scenario, it is appropriate to pass direction to the learned Trial Court for

early conclusion of trial. Reliance is placed upon 2011 SCMR 1332 (Rehmatullah vs. The State).

10. In view of above discussion, the instant post arrest bail application is hereby DISMISSED with direction to the learned Trial Court seized with the matter to conclude the trial within the period of two (02) months, under intimation to this Court.

(LUBNA SALEEM PERVEZ)
JUDGE

(MOHSIN AKHTAR KAYANI)
JUDGE

Khalid Z.