

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

Criminal Misc. No. 763-B/2020
Mst. Sharafat Bibi
Vs
The State

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

24.06.2020	Mr. Zaheer Ullah Jan, Advocate, learned counsel for the petitioner. Dr. Waseem Ahmad Qureshi, Special Prosecutor with Naseer SI/IO, PS RD ANF, North,
------------	--

FIAZ AHMAD ANJUM JANDRAN, J. Through the instant petition under Section 497 Cr.P.C, the petitioner (Mst. Sharafat Bibi), seeks her post arrest bail in F.I.R. No.51, dated 03.06.2020, registered under Sections 9-C of the Control of Narcotics Substances Act, 1997, at Police Station A.N.F./RD North, Rawalpindi.

2. According to the allegation set-forth in the FIR, on 03.6.2020 Sheraz Sadiq Inspector ANF alongwith other officials of ANF was busy in checking the vehicles coming from Peshawar side at Motorway Link Road, Islamabad. At about 17:00 hours, Mehran Car bearing No.LRS-409 white colour coming from Peshawar side, which was stopped, in which three passengers and two children were present. On their disclosure, 2400 grams charas was recovered in three packets lying in driver and front side doors of the car. 10/10 grams charas was separated from each packet for samples. Hence, this FIR.

3. Learned counsel for the petitioner contends that the prosecution story is false, frivolous and concocted one; that nothing was recovered from the possession of the petitioner. In

fact the charas was recovered from the doors of the car in which she was travelling alongwith her two children; that the case has neither been properly investigated nor has justly been evaluated in its true perspective to ascertain the real culprit of the case out of three passengers; that petitioner was only a passenger, neither she was driving the car nor its owner; that investigation is completed and petitioner is no more required for further investigation; that challan has not been submitted for trial as yet and FSL report is still awaited; that there is violation of Section 103 Cr.P.C as place of recovery is a thickly populated area; that petitioner is not involved in any other criminal case, therefore, petitioner is entitled for the grant of bail. Learned counsel fortified his submissions by placing reliance upon case laws reported in 2019 MLD 176; 2020 SCMR 356; 2020 YLR Note 8; 2019 YLR 2544; and 2018 P.Cr.L.J. Note 100.

4. Conversely, the learned Special Prosecutor ANF, has contended that huge quantity of narcotics substance was recovered from the petitioner, therefore, she is not entitled to the concession of bail.

5. Arguments heard, record perused.

6. Perusal of record reveals that the alleged contraband was recovered from front doors of the car, which, at the relevant time, was being driven by the co-accused Saif-ur-Rehman while the present petitioner was sitting at rear seat of the car alongwith her two children. Another accused namely Hassan Khan was also sitting on the front seat of the said vehicle.

Moreover, the alleged contraband has not been recovered from the direct possession of the petitioner and the factum of her conscious knowledge has also yet to be determined at the trial after recording of evidence. In this respect reliance is placed on 2020 YLR Note 8 (Saida Gul Vs. The State), wherein it is held that:-

“Perusal of record would reveals that the alleged contraband was recovered from secret cavities of the motorcar, which, at the relevant time, was being driven by the co-accused Abdur Rehman while the present petitioner was sitting with him on the front seat, thus, the prosecution has yet to prove that the petitioner had any link with the co-accused or not? Moreover, the alleged contraband has not been recovered from the direct possession of the petitioner and the factum of his conscious knowledge has also yet to be determined at the trial after recording of evidence. There is also nothing on record that petitioner is a previous convict or involved in such like cases. Petitioner is behind the bars since his arrest. Investigation in the case is complete and the petitioner is no more required for further investigation is complete and keeping him behind the bars would serve no useful purpose. Therefore, keeping in view the above facts and circumstances of the case, this court is inclined to extend the concession of bail to the petitioner.”

7. In another judgment reported as 2019 SCMR 1651 (Hussain Ullah Vs. State and another), it is held that when accused was arrested by the ANF, he was not driving the car nor any narcotic was recovered from his exclusive possession rather he was sitting on the rear seat of the car. Relevant para is reproduced here under:-

“After hearing the learned counsel for the petitioner, learned Law Officer and perusal of available record, it has been observed by us that when the petitioner

was arrested by the police, he was not driving the car nor any narcotic was recovered from his exclusive possession rather he was sitting on the rear seat of the car. Learned Law Officer has confirmed under instructions of the police officer present in Court that there is nothing on the record to connect the petitioner with the car. In these circumstances, the case of the petitioner becomes one of further inquiry falling within the ambit of section 497 Code of Criminal Procedure. He is behind the bars since 16.3.2017 and nothing is to be recovered from him. In this backdrop, no useful purpose shall be served by keeping him incarcerated for an indefinite period."

8. Perusal of record further reveals that there is a joint recovery of 2400 grams charas from three accused, which was recovered from the front doors of the car and recovery effected on their joint pointation which is not admissible in evidence. In this regard, reliance is placed on case law reported in 2018 P.Cr.L.J. Note 100 (Malang Jan and another Vs. The State). Relevant para is as under:-

"No doubt the petitioners are directly charged in the FIR and as alleged 3 KG of charas has been recovered from a wooden crate, on the Pointation of the present petitioners, but at the same time it is evident from the contents of FIR and the contents of recovery memo, that both the accused were in police custody in another case and were taken to the place of recovery. Recovery was effected on their joint Pointation, which is not admissible in evidence. Under the

law joint recoveries are always considered defective. Wisdom could be drawn from the judgments reported in 1976 PCrLJ 1462, PLD 1989 Kr. 466, 1974 PCrLJ 501 and PLD 1997 SC 408.”

9. The samples separated for analyses were sent to the FSL on 04.6.2020, report whereof is still awaited. It was held in case reported as **2014 YLR 849 (Peshawar) (Shahzad Khizar Hayat Vs. The State)** that “**non availability of such report made the case against accused one of further inquiry**”. Therefore, non-availability of FSL report in respect of contraband charas allegedly recovered makes the case of the petitioner/accused arguable for the purpose of bail, hence the case of the petitioner/accused requires further probe and falls within the ambit of subsection (2) of Section 497 Cr.P.C, which entitles him to the concession of bail on this ground too.

10. Consequently, for what has been discussed above, the instant bail petition is **allowed**, petitioner (Mst. Sharafat Bibi) is admitted to post-arrest bail subject to furnishing bail bonds in the sum of **Rs.200,000/-** (Rupees Two Lac) with one surety in the like amount to the satisfaction of the learned Trial Court.

11. Needless to mention that this is tentative assessment for the purpose of this petition only, which shall not affect/influence trial of this case in any manner.

(MOHSIN AKHTAR KAYANI) (FIAZ AHMAD ANJUM JANDRAN)
JUDGE JUDGE