

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

**Criminal Misc. No. 809-B/2020**

**Sheer Ali**

**Vs**

**The State**

<b>S. No. of order/ proceedings</b>	<b>Date of order/ Proceedings</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
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<b>06.07.2020</b>	<b>Rao Muhammad Sarfraz, learned Advocate for the petitioner. Mr. Husnain Haider Thaheem, learned State Counsel with Tariq Cheema, SI.</b>
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**FIAZ AHMAD ANJUM JANDRAN, J.** Through the instant petition under Section 497 Cr.P.C, the petitioner, Sheer Ali, seeks post arrest bail in F.I.R. No.221, dated 17.04.2020, registered under Section 9-C of the Control of Narcotics Substances Act, 1997, at Police Station Golra Sharif, Islamabad.

2. Facts set-forth in the FIR are that on the complaint of Tariq Rauf SI, CIA Staff, Islamabad the instant case was registered on 17.04.2020, wherein it was alleged that he alongwith other officials of CIA staff was on patrolling near Chungi No.26, when at about 5:15 P.M. one person was coming from bus-stop side, who on seeing the police party tried to escape, but was apprehended. He disclosed his name as Sheer Ali and on search 1250-grams of heroin was recovered from his possession.

3. Learned counsel for the petitioner contends that petitioner was arrested on 17.04.2020 and incomplete challan has been submitted in the Court but the trial has not yet been commenced due to global pandemic of COVID-19; that the case of the petitioner falls within the parameters of borderline criteria; that

the FSL report is awaited; that the instant FIR has been registered by the CIA Staff and not by the police, who was not competent to investigate and process the case, therefore, petitioner is entitled for the grant of bail. Learned counsel fortified his submissions by placing reliance upon case laws reported in 2014 YLR 849; 2020 SCMR 350, 2020 MLD 282; 2018 P.Cr.L.J. 590 and PLJ 2018 SC 812.

4. Conversely, the learned State Counsel contends that petitioner was caught red-handed by the police while he was in possession of 1250 grams heroin; that investigation has been completed and challan has also been submitted in the Court, therefore, he is not entitled to the concession of bail.

5. Arguments heard, record perused.

6. The instant FIR has been registered by the CIA Staff and not by the police, who was not competent to investigate and process the case, while under the law they were required to inform the concerned police station for further progress of the matter. In this respect, reliance is placed on 2020 MLD 282 (Sindh) (Naseer Ahmad Versus The State), wherein it has been held as under:-

*“(h) The DPG has call investigation officer of the case, who is also complainant. The DPG after consulting the investigation officer SIP Roshan Ali informs that CIA Centre is not a police station and investigation was not assigned to him by the SSP or DIG.*

*(i) Since, the complainant is not the Officer Incharge of Police Station nor he belongs to the said Police Station where FIR is lodged; therefore, the*

*investigation cannot be signed to him, as per provision of Rule 25.1 of Police Rule 1934.*

*(j), (k) .....*

- (l) It is not proper for police officer, who is complainant, to investigate the case as a case reported as State V Bashir Ahmed and others PLD 1997 Supreme Court 408, wherein it held as:-*

*“It could hardly be expected that a police officer, who is heading a raiding party and is a witness, also becomes the complainant and logs on FIR against the accused, ,and then becoming an Investigation Officer of the same case, will comply with the aforesaid Police Rule. In the circumstances, the practice of the seizing officer or the head of a police party who is also a witness to the crime becoming or being nominated as an Investigating Officer of the same case should be avoided and if any other competent officer is available in the police station, he may be nominated as the Investigating Officer rather than the head of the Police Part. As observed, Investigating Officer is an important witness for the defence also and in case the head of the police party also becomes the Investigating Officer, he may not be able to discharge his duties as required of him under the Police Rules.”*

7. In another judgment reported as **2018 P.Cr.L.J. 590, (Rashid Hussain Vs. The State)**, the Hon'ble Lahore High held as under:-

*"The above provision does not include C .I.A. personnel, therefore, they have no power to investigate a cognizable offence and the investigation so conducted by Nasir Mehmood S.I. of C.I.A. Staff was illegal. We have fortified our view from the dictum laid down by this Court in "Iftikhar Ahmad alias Dani V. the State (PLD 1995 Lahore 606), wherein it has been held as under:-*

*"The members of the CIA Staff are subordinates of the Superintendents of Police of the District which S.P. has the powers of an Officer-in-Charge of a police station in view of the provisions of section 551 of the Cr.P.C. Therefore, the members of the CIA Staff, irrespective of their rank and status, can investigate, cases only when they have been entrusted to them by an Officer-in-Charge of the Police Station to whom they are subordinate i.e. in case of CIA Staff, the S.P. of the District. Therefore, no member of the CIA Staff has any authority or power to investigate a case of their own motion in the absence of such an investigation having been entrusted to him by the S.P. of the District as abovementioned."*

8. From above, it has become crystal clear that the instant FIR was lodged and processed by the CIA Staff, which is not warranted under the

Police Rules as well as the dictums laid by the superior courts of the country.

9. The case of the petitioner as per FIR is recovery of 1250 grams heroin, which is a borderline case and is marginally in excess of the quantity. In such like cases, the Hon'ble Supreme Court of Pakistan granted bail on the basis of borderline and in this respect reliance is placed on 2020 SCMR 350 (Aya Khan and another Vs. The State) and another judgment reported as PLJ 2018 SC 812 (Saeed Ahmed Vs. The state etc), wherein 1350 grams substance recovered marginally exceeds 1 K.G. and benefit of bail was extended to the accused.

10. The perusal of record further reveals that 1250 grams heroin was recovered from the petitioner/ accused on 17.04.2020 and samples separated from it for chemical analysis were sent to the FSL on 20.04.2020 but the report is awaited. Non-availability of FSL report in respect of contraband heroin allegedly recovered makes the case of the petitioner/accused one of further inquiry 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. 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*".

11. It is by now well settled that an accused person cannot be left at the mercy of the prosecution to remain in jail for an indefinite period. The liberty of an individual has been guaranteed by the Constitution and to have a

speedy trial is an inalienable right of every accused person. The Hon'ble Apex Court in case of **"Imtiaz Ahmed Vs The State through Special Prosecutor, ANF (2017 S C M R 1194)** held that:-

*"17. To have a speedy trial, is the fundamental right of accused being universally acknowledged. Under the Criminal Procedure Code, smooth methodology and scheme for speedy trial, is provided whether it is held by the Session Court or Magistrate, in recognition of the said right of an accused person. This principle shall apply more vigorously to the trials before Special Courts, constituted under the CNS Act, or any other special law so that unnecessary delay, much less shocking one in its conclusion is avoided in all circumstances. Any unreasonable or shocking delay in the conclusion of the trial, before Special Courts, like we are confronted with in the present case, would amount to denial of justice, or to say, denial of fundamental rights, to the accused, of speedy trial."*

12. For what has been discussed above, the instant bail petition is **allowed**, petitioner (Sheer Ali) is admitted to post-arrest bail subject to furnishing bail bonds in the sum of **Rs.100,000/-** (Rupees One Lac) with one surety in the like amount to the satisfaction of the learned Trial Court.

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

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