

Form No: HCJD/C-121.

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

JUDICIAL DEPARTMENT

Crl. Misc. No. 828-B of 2020.

Hamad Raza.

Vs

The State, etc.

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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02.	22.07.2020.	Mian Sohail Mehmood, Advocate for the petitioner. Mr. Hammad Saeed Dar, State Counsel. Mr Abdul Hameed, SI with record.
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The petitioner Hamad Raza son of Naseer Ahmed has sought post arrest bail in case F.I.R. No. 181, dated 07.04.2020, registered under section 9-C of the Control of Narcotics Substances Act, 1997 (hereinafter referred to as "***CNSA of 1997***") at Police Station Koral, Islamabad.

2. Brief facts, as alleged in the FIR are that the petitioner was arrested pursuant to recovery of 2068 grams of narcotics / charas. Hence the instant FIR.

3. The learned counsel for the petitioner has contended that; allegations against the latter are false and vexatious; story as narrated in the FIR is concocted; the

petitioner has no concern whatsoever with the alleged recovery; there is delay of one hour in registration of the FIR; no incriminating material was recovered from the petitioner; there is violation of section 103 of Cr.P.C., as no private witness was associated during recovery proceedings; there is no evidence of sale / purchase of contraband substance; investigations qua the petitioner have been completed and he is no more required for the purposes thereof; the petitioner has been incarcerated for more than three and a half months; no prosecution witness has been recorded as yet; case of the petitioner comes within the ambit of section 497(2) of Cr.P.C.; there is no chance of abscondance of the petitioner or tampering with the prosecution evidence; the petitioner has no criminal record; the petitioner is innocent; there is no chance of completion of prosecution evidence in near future; incomplete report under section 173 of Cr.P.C. has been submitted before the learned trial Court; further incarceration of the petitioner will not serve any useful purpose; there is no eye witness of the alleged occurrence; recovery has been planted; offence is not attracted against the petitioner; offence does not fall within the prohibitory clause of section 497 of Cr.P.C.; the petitioner is victim of malicious prosecution; the case against the petitioner is that of further probe; bail concession cannot be held as a punishment; hence prayed for the grant of post arrest bail. The learned counsel for the petitioner has placed reliance on the cases titled as "*The State through Director General, ANF vs. Said Ahmed*" [2011 SCMR 908], "*Tahir*

Khan and another vs. The State" [2019 MLD 361], *"Aya Khan and another vs. The State"* [2020 SCMR 350], *"Asif Islam vs. The State through Police Station ANF Clifton and another"* [2020 YLR Note 25] and *"Zaigham Ashraf vs. The State and others"* [2016 SCMR 18].

4. The State Counsel appeared alongwith Abdul Hameed, SI. They have contended that; the petitioner is nominated in the FIR; specific role has been attributed to the petitioner; the petitioner was arrested red handed at the crime scene; recovery of 2068 grams of charas was recovered from possession of the petitioner; report under section 173 of Cr.P.C. has been submitted before the learned trial Court and trial will be concluded shortly; the petitioner has failed to point out any malafide on part of the prosecution; hence he has urged for dismissal of the petition.

5. The learned counsel for the petitioner and the learned State Counsel has been heard and record perused with their able assistance.

6. Perusal of the record reveals that 'charas' weighing 2068 grams was recovered from the petitioner, which was concealed in a plastic bag. The petitioner was arrested from the crime scene. The factor of conscious knowledge at this stage obviously cannot be ruled out. Substantial quantity of contraband substance was

recovered from possession of the petitioner. Samples of the contraband substance were separated for Chemical Examination and sent for analysis. Charge has been framed against the petitioner. The report under section 173 of Cr.P.C. has been submitted before the learned trial Court. There is sufficient incriminating material placed on record to decline post arrest bail. We have been informed that there are seven witnesses and it is expected that the trial of the case will be concluded shortly. We are, therefore, not inclined to extend the concession of bail. However, we expect that the learned trial Court will endeavour to record the prosecution witnesses expeditiously. We also expect that the prosecution as well as the petitioner will ensure that trial is not delayed.

7. For the above reasons, bail is ***refused*** and the instant petition is accordingly ***dismissed***.

Needless to mention that the observations recorded in the instant petition are based on tentative assessment, which will obviously not prejudice the proceedings before the learned trial Court.

(GHULAM AZAM QAMBRANI)
JUDGE

(CHIEF JUSTICE)

Asad K/*