

JUDGMENT SHEET  
**ISLAMABAD HIGH COURT**  
**ISLAMABAD**

**Crl. Misc. No.146-B/2020**

**MUZAMMAL HUSSAIN.**

Versus

**THE STATE.**

*Petitioner by:* Ms. Nageena Rehman, Advocate.

*State by:* Mr. Muhammad Sohail, State Counsel.  
Mr. Ashfaq, S.I/CIA.

*Date of Hearing:* 17.03.2020.

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**LUBNA SALEEM PERVEZ; J.** Through instant petition, Petitioner namely Muzammal Hussain, seeks post arrest bail under section 497 Cr.P.C, in case FIR No.22/20, dated 11.01.2020, offence under section 9-C CNSA, registered at Police Station, Shahzad Town, Islamabad.

2. The facts, as per FIR are that Petitioner was apprehended from Shahzad Town, Rawal Dam Chowk, near Shell Petrol Pump, Islamabad, and 1940 grams Charas in the form of littars, contained in two packets, wrapped in yellow colored solution tape, was recovered from his personal search, out of which 10 grams Charas from each packet was separated as sample for chemical examination, whereas, the remaining packets were sealed and handed over to concerned officials.

3. Petitioner before filing of this bail application also applied for post arrest bail before the learned Additional Sessions Judge, East-Islamabad, who vide order dated 28.01.2020 declined the same. Hence, present criminal miscellaneous petition for post arrest bail.

4. Learned counsel for the accused/petitioner contended that the petitioner is innocent who has been falsely implicated in the case. Learned Counsel contended that as per FIR, the accused has been arrested with the contraband from a thickly populated area but no private witness has been associated at the time of alleged recovery of contraband by the police officials which is violation of Section 103 Cr.PC. Learned Counsel further submitted that investigation has been completed and challan has already been sent to the Court, whereas, the

Petitioner is in judicial custody since his arrest on 11.01.2020. Learned counsel vehemently argued that in the present case investigation has been conducted by the CIA officials without lawful authority. Learned Counsel lastly contended that petitioner is first offender having no previous record of conviction who is ready to furnish adequate surety to the satisfaction of the court; therefore, may be released on bail. Learned counsel in support of his contentions placed reliance on the case law reported as **Muhammad Afzal Vs. The State (PLD 2000 SC 816) & Mehboob Ali alias Booba Vs. The State (1997 PCr.LJ 945).**

5. Learned State Counsel, along with Sub-Inspector/I.O, CIA, in attendance, submitted the case record and, *inter-alia*, contended that petitioner was caught red handed with the contraband and the in-complete challan has already been submitted before the Court. Investigating Officer stated that investigation was conducted by CIA under verbal direction of concerned authority. Learned State Counsel submitted that accused petitioner is not entitled for bail as he is directly involved in heinous offence.

6. We have heard the learned Counsel for the accused petitioner as well as learned State Counsel and also perused the record with their able assistance.

7. As per FIR, the Charas recovered from the Petitioner was 1940 grams and the petitioner was apprehended from a busy place where presence of general public cannot be ignored, however, no independent witness has been associated at the time of recovery and arrest of the petitioner. Further, contents of the FIR also do not reflect that any effort for association of any independent witness was made by the police officials. Thus, provisions of Section 103 Cr.PC. have not been complied with and this fact cannot be ignored in the absence of any special reasons therefor, as the same adversely affects the prosecution case and creates doubt in favour of accused/petitioner and makes the case one of further inquiry. Reliance in this regard is placed on the case law reported as **Shan Vs. The State (2015 PCr.LJ 747)**, and **Muhammd Usman Vs. The State (2017 YLR Note 66).**

8. Moreover, as per Section 19 of the Control of Narcotic Substances Ordinance, 1995 no police official below the rank of Sub-Inspector of Police is empowered to enter, search, seize and arrest without warrant, any person for an offence under the said Ordinance. But in the present case, the search, seizure and arrest has been made by CIA staff and the investigation has been conducted by an official of the C.I.A. The investigation in such like cases by CIA staff has

been disapproved by the superior Courts in view of the jurisdiction of CIA staff without authorization by the competent authority. Reliance in this regard can well be placed on the case law reported as *Iftikhar Ahmad Dani vs. The State (PLD 1995 Lah. 606) and Nasir Khan Vs. The State (1997 MLD 1473)*.

9. For the foregoing reasons, we allow this petition and admit the Petitioner to bail subject to furnishing of bail bonds in the sum of Rs. 1,00,000/- (One Lac) with one surety in the like amount to the satisfaction of learned Trial Court.

10. It is made clear that the observations made hereinabove, being tentative in nature, shall not prejudice the case of either party.

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**

**(LUBNA SALEEM PERVEZ)**  
**JUDGE**

**Adnan/-**