

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

Criminal Misc. No. 853-B/2020

**Saif-ur-Rehman
Versus
The State**

S. No. of order	Date of order	Order with signature of Judge and that of parties or counsel where necessary.
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28.07.2020	Mr. ZaheerUllah Jan, Advocate for the petitioner. Dr.WaseemAhmad Qureshi, Special Prosecutor, ANF. Mr. Taqi Abbas, Inspector/S.H.O. P.S. A.N.F., R.D., North, Rawalpindi.
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FIAZ AHMAD ANJUM JANDRAN, J.Through this Crl. Misc. petition, petitioner (Saif ur Rehman) has prayed for post-arrest bail in case FIR No.51, dated 03.06.2019, registered under Sections9-C and 15 of Control of Narcotics Substances Act, 1997, at Police Station A.N.F./RD North, Rawalpindi.

2. According to the allegations set-forth in the FIR, on 03.6.2020 Sheraz Sadiq Inspector 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 came from Peshawar side, which was stopped, three persons with three children were sitting therein. On their disclosure, 2400 grams charas, wrapped in three packets, were recovered from front doors of the car out of which 10 grams each was separated for chemical analysis Hence, this FIR.

3. Learned counsel for the petitioner contends that the prosecution story is false, frivolous and concocted; that nothing was recovered from the possession of the petitioner; that bail of co-accused has already been

granted by this Court vide order date 24.6.2020, therefore, petitioner deserves the same treatment on the principle of consistency.

4. Conversely, learned Special Prosecutor ANF contends that the petitioner is nominated in the FIR and was arrested at the spot with huge quantity of narcotics substance, therefore, not entitled to the concession of bail.

5. Arguments heard, record perused.

6. Perusal of record reveals that 2400- grams of charas was recovered from the possession of the petitioner. The quantity of narcotics substance recovered entails death punishment, life imprisonment or imprisonment up to 14 years and falls within the ambit of prohibitory clause of Section 497 Cr.P.C, therefore, in such type of cases, no benefit could be extended to the petitioner/accused.

7. Record further reveals that the case of the present petitioner/accused is not identical to the other two co-accused, who were allowed bail by this Court as the role of the present petitioner is that of a driver of the vehicle, wherefrom narcotic was recovered unlike co-accused who were only found travelling in the said vehicle.

8. It is now well settled that in case where contraband is transported in a vehicle, the main role lies on the person who is driving the vehicle. The Hon'ble Apex Court in case reported as Nadir Khan and another Vs. The State (1988 SCMR 1889) held that "a driver of a vehicle is to be saddled with the responsibility of conscious possession of narcotic

substance found in the vehicle being driven by him”.

Relying upon the said judgment of the Hon’ble Apex Court, the Hon’ble Lahore High Court also refused bail to an accused having identical role in case reported as **(Mohammad Faisal Vs. The State 2006 YLR 3039).**

9. The case law reported as **2020 SCMR 444** is on different yardstick as in that case the petitioner was travelling in a vehicle as passenger and was not driving the vehicle, while in case reported as **2020 SCMR 350**, the substance recovered was 1100 grams of heroin which is a border line case while in the present case recovered substance is 2400 grams which falls under Section 9/C of the Act of 1997 which provides death punishment, life imprisonment or imprisonment up to 14 years. Therefore, said case laws are not applicable to the facts of instant FIR.

10. In view of above, the petitioner is not entitled to the concession of post arrest bail. Therefore, instant post arrest bail petition is **dismissed**. However, the petitioner has a legitimate right that his case is to be decided as early as possible, therefore, while relying upon case law reported as **“2011 SCMR 1332 (Rehmatullah and another Vs. the State)**, the learned Trial Court is directed to conclude the trial within a period of two months after the receipt of this order under intimation to this Court by proceedings with the case on day-to-day basis.

11. Due to prevailing situation of COVID-19 pandemic, the learned Trial Court shall arrange video link facility to the accused for earlier conclusion of the trial without wastage of time for their production

before the Court from Adyala Jail, Rawalpindi which is not possible in the present situation.

11. The learned Prosecutor ANF apprised that the video link facility has been arranged in the Trial Court, therefore, the ANF Authorities are directed to produce all the witnesses on the next date of hearing to ensure speedy conclusion of the trial.

(MOHSIN AKHTAR KAYANI)
JUDGE

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

M.A. Raza *