

JUDGMENT SHEET
ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No.105-B/2020

Sohail Ali
Versus
THE STATE.

Petitioner by: Mr. Farhat Ullah Jan, Advocate.

State by: Mr. Muhammad Sohail Khurshid, State
Counsel. Mr. Ashfaq, S.I.

Date of Hearing: 19.02.2020.

LUBNA SALEEM PERVEZ; J. Through instant petition, under Section 497 Cr.P.C, Petitioner Sohail Ali s/o Sohbat Ali, seeks post arrest bail, in case FIR No.20/2020, dated 12.01.2020, under section 9-C CNSA, at Police Station, Sabzi Mandi, Islamabad.

2. The case of the prosecution against the Petitioner is that on spy information the Petitioner was apprehended along with two other accused near Faqeer Appi Road, Sector I-11/3, Islamabad, driving car bearing No. LWG-8685, Hyundai Santro (accidental). On the pointation of accused huge quantity of Charas kept in 15 plastic bags wrapped with yellow colour solution tape was recovered from a secret cavity in the rear bumper inside the body of the said car. When weighed, each packet found containing 1050 grams of Charas and 15 packets contained 15.750 kg Charas in total, out of which 10 grams from each packet was separated for sample and sent for chemical examination, whereas, remaining packets were sealed and handed over to concerned officials.

3. Petitioner, earlier to this, Petitioner's post arrest bail was also declined by the learned Sessions Judge (West) Islamabad, vide order dated 10.02.2020. Hence present criminal miscellaneous petition for post arrest bail.

4. Learned Counsel for Petitioner, *inter-alia*, contended that the accused/petitioner was arrested on 12.01.2020. Learned Counsel further contended that the case against the Petitioner has been registered by staff of CIA in violation of Section 156(1) Cr.PC, having

no jurisdiction in the matter, whereas, no contraband/narcotics has been recovered from the direct possession of the accused Petitioner as he was sitting next to the driving seat. Moreover, he is not the owner of the vehicle, whereas, his co-accused namely Jamshed Khan has already been admitted to bail by the Court of Additional Sessions Judge-West, Islamabad, vide order dated 04.02.2020. Learned Counsel lastly contended that Petitioner is previously non-convict and ready to furnish adequate surety to the satisfaction of the court; therefore, may be released on bail.

5. On the other hand, learned State Counsel submitted that accused has been arrested with 15.750 kg of charas, recovered from the secret cavity of the vehicle on the pointation of the accused. It is further submitted that the challan has already been submitted before the Court on 15.01.2020, therefore, he is not entitled for bail.

6. We have heard the learned Counsel for Petitioner as well as learned State Counsel and have also perused the relevant record submitted by S.I.

7. Although learned counsel for the Petitioner has pleaded innocence of the Petitioner while submitting that he has falsely been implicated in the case with malafide intention, however, the fact that the recovery of 15.750 kg of charas has been made on accused Petitioner's pointation cannot be ignored. The case falls under section 9-C of CNSA, 1997, as such comes within the ambit of prohibitory clause of section 497 Cr.PC. It is a well settled principal of law that when an offence is hit by the prohibitory clauses of section 497, Cr.P.C. the accused cannot claim bail as a right and grant of bail in such like cases is discretionary. However, the bail applications are not decided in vacuum. Whereas, upon tentative assessment of the material so far collected by the prosecution in shape of statements of witnesses u/s 161 Cr.P.C. and recovered narcotics an opinion can be made that there exists a prima facie case against the accused or not.

8. In the present case, accused Petitioner in his statement u/s 161 has himself admitted that he and other co-accused Shahid Zaman were partner in transportation of recovered Charas from the vehicle and Jamshed had no knowledge of presence of drugs in the vehicle. Similar statement has been given by the co-accused Shahid Zaman u/s 161 as he also admitted that he along with present petitioner placed the narcotics substance in the vehicle, whereas, Jamshed was

unaware of it. When said portion of statements of the accused are placed in juxtaposition with the contents of FIR it prima-facie forms nexus of the accused Petitioner with the commission of offence. Although, by applying the principle of tentative assessment of evidentiary value of the material placed before the court, for grant/refusal of bail is a discretion but when the offences relates to an offence against society, the discretion should be exercised with an extra care and caution and with some restraint.

9. From the tentative assessment of the material available in the hands of prosecution, there exists a prima facie case against the petitioner, as such a huge quantity of narcotics substance has been recovered, in our view, accused/petitioner is not entitled for the concession of bail. Reliance of the learned counsel for the Petitioner on the case of co-accused namely Jamshed Khan who has been granted bail by Additional District Judge Islamabad is distinguishable as he was granted bail on the ground that he was sitting at the rear seat of the vehicle and he had no knowledge about the presence of narcotics and no specific role was attributed to him by the prosecution. The contention of the learned Counsel that the case has been registered by S.I. CIA having no jurisdiction over the case cannot be dealt with at this stage as the present case has been filed on the sole issue of grant of bail.

10. For what has been discussed above, we are not inclined to exercise discretion in favour of petitioner, therefore his petition for bail after arrest is hereby dismissed.

11. All the observations made hereinabove are tentative in nature and shall have no bearing on the final determination of guilt or innocence by the trial Court.

(MOHSIN AKHTAR KAYANI)
JUDGE

(LUBNA SALEEM PERVEZ)
JUDGE

*Adnan/**