

JUDGMENT SHEET
ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No.85-B/2020

ROHEEN BIBI.

Versus

THE STATE.

Petitioner by: Raja Shahzad Anwar, Advocate.

State by: Dr. Waseem Ahmed Qureshi, Special Prosecutor,
ANF.
Sheraz, Inspector, ANF.

Date of Hearing: 04.03.2020.

LUBNA SALEEM PERVEZ; J. Through instant petition, Petitioner namely Roheen Bibi, seeks post arrest bail under section 497 Cr.P.C, in case FIR No.12/20, dated 18.01.2020, under section 9-C CNSA, registered at Police Station, ANF/RD North, Rawalpindi.

2. The facts, as per FIR are that Petitioner was apprehended from Koral Chowk, Service Road East, Islamabad, and 1200 grams heroin, wrapped in Khaki colored solution tape, was recovered from her black colored hand bag, out of which 10 grams heroin was separated as sample for chemical examination, whereas, the remaining packet was sealed and handed over to concerned officials.

3. Petitioner before filing this bail application before this Court also applied for post arrest bail before the learned D/Judge, Special Courts, (CNS), Islamabad, who vide order dated 30.01.2020 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, which has been registered against her with malafide intentions. Learned Counsel contended that as per FIR, the accused has been arrested with the contraband from the public place but no private witness has been associated at the time of alleged recovery of contraband by the police officials. Learned Counsel further submitted that Petitioner's case does not fall within the prohibitory clause of section 497 Cr.P.C.

Moreover, investigation has been completed and challan has already been sent to Court while trial is in progress and the Petitioner is in judicial custody since her arrest on 17.01.2020/18.01.2020. Learned Counsel lastly contended that the case of Petitioner is one of further inquiry; she is first offender having no previous record of conviction and ready to furnish adequate surety to the satisfaction of the court; therefore, may be released on bail.

5. Learned Special Prosecutor, along with Inspector, ANF, in attendance, submitted the case record and contended that sample of the narcotic substance was sent for chemical examination within the prescribed time i.e. on 20.01.2020, and the challan has already been completed on 07.02.2020. He submitted that accused petitioner is not entitled for bail as she is directly involved in heinous offence.

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

7. As per FIR, the heroin recovered from the Petitioner is 1200 grams when it was weighed and it seems that it has been weighed along with the shopping bag wrapped with solution tape, and if its parcel is separated from the substance/heroin, it may reduce its weight and attract the provisions of section 9-B of the CNSA, Act, 1997, therefore, it becomes a borderline case between clauses 9-B and 9-C of the CNSA, Act, 1997 and it has been the consistent view of the superior Courts that in cases where recovery of narcotic substance does not exceed the limit between 900 to 1500 grams, the case is considered to be of borderline between clauses (b) and (c) of section 9 of Control of Narcotic Substances Act, 1997 and invariably in all such cases, applicants have been admitted to bail. In this regard, guidance can be sought from the cases of **Liaqat Ali alias Liaqi Vs. The State and another (2020 YLR Note 20)**, **Lal Bux Vs. The State (2017 MLD 1164)**, **Wajid alias Waji Vs. The State (2016 PCr.LJ 831)**, **Muhammad Afzal Vs. The State (2012 MLD 220)**, **'Ayaz v. The State' (2011 PCr.LJ 177)**, **'Mehboob Ali v. The State' (2007 YLR 2968)**, and **'Taj Ali Khan v. The State' (2004 YLR 439)**.

8. Moreover, all the PWs are officials of ANF, whereas, no private witness has been associated at the time of arrest of Petitioner and recovery of narcotic substance, which makes the instant case one of further inquiry and as per principles settled by Hon'ble Supreme Court of Pakistan in case titled as **Amir**

Zeb vs. The State” reported as (PLD 2012 SC 380) and Ateeb Ur Rehman Vs. The State reported as (2016 SCMR 1424), petitioner, in our view, is entitled for bail after arrest. Record further reveals that challan is complete and is submitted before the Court. The Petitioner is no more required for further investigation, who is continuously behind the bars since her arrest and no useful purpose would be served if she is kept behind the bars for an indefinite period.

9. In view of the above, 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/-