

HCJD/C-121
ORDER SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

CRL. MISC. NO. 206-B of 2020.

Rasool Abad.
VERSUS
The State.

S.No. of order/ Proceeding	Date of hearing	Order with signature of Judge, and that of parties or counsel, where necessary.
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30.03.2020. Mr Iftikhar Ahmad Bajwa, Advocate for the petitioner.
Dr Wasim Ahmad Qureshi, Special Prosecutor, ANF.
Mr Sheraz, Inspector/I.O. with record.

The petitioner Rasool Abad son of Meshal Khan has sought post arrest bail in case, F.I.R. No. 157, dated 28.07.2019, registered under section 9-C and 15 Control of Narcotics Substance Act, 1997 (hereinafter referred to as the "**Act of 1997**"), at Police Station ANF(RD) North, Rawalpindi.

2. Brief facts, as alleged in the FIR are that pursuant to an information, officials of the Anti-Narcotics Force, intercepted a vehicle. The petitioner was seated on the passenger seat, whereas the co-accused namely, Hussain Akbar was driving the vehicle. The search of the vehicle led to recovery of "charas", weighing 1200 grams and "heroin" weighing 150 grams. Hence the instant petition.

3. The learned counsel for the petitioner has contended that; this is second bail petition of the petitioner; the earlier petition was dismissed on merits vide order, dated 05.11.2019; the latter has been falsely involved in the instant case; the petitioner is innocent; no incriminating material was recovered from the petitioner; the co-accused

namely, Hussain Akbar was enlarged on bail vide order, dated 17.12.2019 and the petitioner is also entitled to the same relief, keeping in view the rule of consistency; the petitioner has no criminal record; the petitioner has been incarcerated for eight months; the petitioner has no concern whatsoever with the alleged recovery; this is a day light occurrence and the place of occurrence is a thickly populated area but no witness from the public was associated during recovery proceedings which is violation of section 103 of Cr.P.C.; story as narrated in the FIR is false, frivolous and vexatious; further incarceration of the petitioner will not serve any useful purpose; the petitioner is not a hardened criminal; there is no chance of abscondance of the petitioner or tampering with the prosecution evidence; offence does not fall within the ambit of prohibitory clause of section 497 of Cr.P.C.; there is no evidence of sale / purchase of contraband substance; the case against the petitioner has been registered with malafide intention and ulterior motives; investigation qua the petitioner has been completed and he is no more required for the purposes thereof; incomplete report under section 173 of Cr.P.C. has been submitted before the learned trial Court; there is no evidence against the petitioner; charge has not been framed against the petitioner as yet; the petitioner is ready to furnish surety to the satisfaction of the Court; there appears no reasonable ground for believing that petitioner/accused has committed any offence; there are sufficient grounds for further inquiry into the guilt of the petitioner. Hence urges for the grant of post arrest bail.

4. The learned Special Public Prosecutor, ANF appeared alongwith Sheraz Inspector/I.O. and opposed the bail. It is contended that; the petitioner is nominated in the FIR; specific role has been

attributed to the petitioner; recovery of 1200 grams of charas and 150 grams of heroin has been affected from the petitioner and co-accused; report under section 173 of Cr.P.C. has been submitted before the learned trial Court; however, it is admitted that the charge has not been as yet because the Court was not functional for a long time but now it has become functional and the trial of the case will be concluded shortly; the earlier bail petition of the petitioner was dismissed on merits and the petitioner has no fresh ground to be considered for extending concession of bail at this stage; the agency had no previous enmity with the petitioner; the officials are competent witnesses; hence, he has opposed the grant of bail.

5. We have heard the learned counsel for the petitioner and the learned Special Prosecutor, ANF and perused record with their able assistance.

6. Admittedly, the petitioner was seated on the front seat whereas, the co-accused namely, Hussain Akbar was driving the vehicle at the time of alleged recovery. Joint recovery has been affected from the present petitioner and the other co-accused, who has been enlarged on bail. The petitioner has been incarcerated for eight months. Incomplete report under section 173 of Cr.P.C. has been submitted before the learned trial Court. Investigation qua the petitioner has been completed. Charge has not been framed as yet due to the fact that the Court remained dysfunctional for a long time. However, the Court has now become functional but it will take time to conclude the proceedings. Furthermore, report of chemical examiner is not annexed with the report to ascertain whether the recovered contraband substance was narcotics. The co-accused of the petitioner namely, Hussain Akbar has been enlarged on

bail and, therefore, on the touchstone of the principle of consistency it would be unjust to treat the petitioner differently. We are, therefore of the opinion that a case for extending the concession of bail is made out.

7. It has been aptly observed by the august Supreme Court in the case of "*Manzoor and 04 others versus The State*" reported as [PLD 1972 S.C. 81] as follows:

"The ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of interim bail granted to him, but no satisfactory reparation can be offered to an innocent man for his unjustified incarceration at any stage of the case albeit his acquittal in the long run".

In the light of the facts and circumstances of the present case, refusal of bail will tantamount to punishing the petitioner.

8. In the circumstances as mentioned above, this petition is ***allowed***, subject to furnishing bail bonds in the sum of Rs.100,000/- (Rupees one hundred thousand only) with one surety in the like amount to the satisfaction of learned trial Court.

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.

(MOHSIN AKHTAR KAYANI)
JUDGE

(CHIEF JUSTICE)