

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl.Misc.No.965-B of 2020

Sher Muhammad

Versus

The State and another

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	07.10.2020	Mr. Laiq Khan Swati, Advocate for the petitioner Mr. Fahad Khan, learned State Counsel with Teepu Sultan S.I. P.S. Shehzad Town and Aamir Abbas S.I. P.S. Tarnol, Islamabad

Through the instant criminal miscellaneous petition, the petitioner seeks his bail after arrest in case F.I.R.No.416, dated 02.07.2020, registered under Sections 9(c) of the Control of the Narcotic Substances Act, 1997 ("C.N.S.A.") at Police Station Tarnol, Islamabad.

2. Vide order dated 17.08.2020, the petitioner's petition for bail after-arrest was dismissed by the Court of the learned Judge Special Court (C.NS.), Islamabad.

3. Learned counsel for the petitioner, after reading the contents of the F.I.R., submitted that the case against the petitioner was a borderline one between Sections 9(c) and 9(b) of C.N.S.A.; that the alleged contraband substance was weighed along with packing and the exact weight of the substance cannot be conclusively determined at this stage; that no private witness was associated in the recovery process and as a result there is a violation of Section 103 Cr.P.C.; that the petitioner is previously non-convict and non-record holder; that the petitioner has been incarcerated for the last more than three months; and that the offence alleged to have been committed by the petitioner does not fall within the prohibitory clause of Section 497(1) Cr.P.C. Learned counsel for the petitioner

prayed for the bail petition to be allowed and for the petitioner to be released on bail.

4. On the other hand, learned State Counsel opposed the bail petition by contending that the petitioner is nominated in the F.I.R.; that the petitioner was arrested from the crime scene; that 1250 grams of *heroin* was recovered from the petitioner's immediate possession; and that the quantity of recovered contraband substance falls within the parameters of Section 9(c) of C.N.S.A, which provides capital punishment. Learned State Counsel prayed for the bail petition to be dismissed.

5. We have heard the arguments of the learned counsel for the petitioner as well as the learned State Counsel and perused the record with their able assistance.

6. The gist of the allegations against the petitioner in the F.I.R. is that on 02.07.2020 at about 06:45 p.m., he was apprehended by the police officers who were on patrol duty in the jurisdiction of Police Station Tarnol, Islamabad. After the petitioner was searched, 1250 grams of heroin was recovered from him.

7. Perusal of the record shows that on 02.07.2020, Teepu Sultan S.I. along with other police personnel were on patrol duty at *Chungi* No.26 Bus Stop. The accused/petitioner got off the Toyota Hiace coming from Peshawar. On seeing the police party, the petitioner tried to escape but was overpowered by the police and one packet of *heroin* weighing 1250 grams was recovered from his possession. The contents of the F.I.R. show that out of the total recovered *heroin*, a sample weighing only one gram of narcotic substance was sent for chemical examination. However, report of the chemical analysis is still awaited. The recovered

alleged heroin was wrapped in a yellow tape and was in the shape of a packet. There is nothing on the record to show that the packing material was separately weighed. If the packing material is weighed the alleged quantity of recovered *heroin* may bring the case under Section 9(b) of C.N.S.A. Thus we are of the view that the case against the petitioner is a borderline one between Sections 9(c) and 9(b) of C.N.S.A. On account of this factor, we are inclined to grant post-arrest bail to the petitioner.

8. In the case of Ghulam Abbas Vs. The State reported as 2011 YLR 1723, bail was granted to accused from whom 1,100 grams of *charas* was recovered. It was held that the total quantity of the alleged *charas* being 1,100 grams, marginally exceeded the borderline falling between the offence under Sections 9(b) and 9(c) of C.N.S.A. In the case of Ali Akbar Vs. The State, reported as 2010 YLR 127, bail was granted to the accused, because the quantity of the alleged recovered *charas* marginally exceeded 1,000 grams. It was held to be a case borderline case between clauses (b) and (c) of the C.S.N.A., where maximum punishment could not be awarded. In the case of Sherin Muhammad Vs. The State, reported as 2006 P.Cr.L.J. 726, bail was granted to accused from whose house *charas* weighing 1,130 grams had been recovered during a raid. It was considered to be a borderline case and a point of discussion and further inquiry to determine the guilt of the accused. In the case of Dila Baz Khan Vs. The State, reported as 2008 P.Cr.L.J. 1437, bail was granted to an accused from whom 1,675 grams of *charas* was recovered. It was held to be a borderline case between clauses (b)

and (c) of the C.S.N.A. All these cases come to the aid of the petitioner.

9. Furthermore, as all the prosecution witnesses are stated to be police officials, there is no chance of the accused tampering with the evidence. The petitioner has already spent more than three months behind bars and the prosecution witnesses have not been examined as yet.

10. In view of the aforementioned, we are inclined to admit the petitioner on bail subject to his furnishing bail bonds in the sum of Rs.50,000/- with one surety in the like amount to the satisfaction of the learned Trial Court. Before parting with this order, we would like to add that the observations made herein above are tentative in nature and shall not influence the course of the trial in any manner.

(LUBNA SALEEM PERVEZ)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan