

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

**Criminal Misc. No. 759-B/2020**  
**Nauman Mushtaq**  
**Vs**  
**The State**

<b>S. No. of order/ proceedings</b>	<b>Date of order/ Proceedings</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
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22.06.2020	Ms. Huma Jamil Babur, learned Advocate for the petitioner. Mr. Zohaib Gondal, learned State Counsel with Abdul Hameed SI.
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**FIAZ AHMAD ANJUM JANDRAN, J.** Through the instant petition under Section 497 Cr.P.C, the petitioner, (Nauman Mushtaq) seeks his bail after arrest in F.I.R. No.285, dated 19.05.2020, registered under Section 9-C of the Control of Narcotics Substances Act, 1997, at Police Station Koral, Islamabad.

2. According to the allegation set-forth in the FIR, on 19.05.2020 at about 11:30 am, police party headed by the complainant Abdul Hameed SI was present in the area of Fazaia Stop, Express Highway, Islamabad when a person (present petitioner) coming from Rawalpindi was halted on suspicion and on search, found in possession of charas weighing 1350 grams.

3. Learned counsel for the petitioner contends that the petitioner was arrested by the local police due to some personal grudge and when his brother filed petition under Section 491 Cr.PC, police tried to fill up the lacuna of colorable exercise of power and to justify the illegal detention, lodged the instant FIR; that at the time of recovery, no private witness was associated by the police despite being public place; that case of

the petitioner falls within the parameter of borderline criteria; that FSL report is still pending; that there is no allegation of selling of said charas to any one; therefore, petitioner is entitled for the grant of bail.

4. Conversely, the learned State Counsel contends that petitioner was caught red handed by the police while he was in possession of 1350 grams charas; that investigation has been completed and challan has also been submitted in the Court, therefore, he is not entitled to the concession of bail.

5. Arguments heard, record perused.

6. Cursory glimpse of record reveals that petitioner was arrested, while in possession of 1350 grams Charas by the local police. Incomplete Challan has been submitted in the Court but due to global pandemic of COVID-19, no material progress has been made in the trial.

7. That quantity of 1350 grams charas, which is a borderline case and is marginally in excess of the quantity, in such like cases, Hon'ble Supreme Court of Pakistan granted bail on the basis of borderline and in this respect reliance is placed on 2020 SCMR 350 (Aya Khan and another Vs. The State), judgment reported as PLJ 2018 SC 812 (Saeed Ahmed Vs. The state etc), wherein 1350 grams substance recovered marginally exceeds 1 K.G. and benefit of bail was extended to the accused and judgment reported as 2017 MLD 1097 (Naimatullah and another Vs The State), wherein it was held that in cases where recovery of narcotic substance does not exceed the limit between 900 to 1500 grams the case being of

borderline between clauses (b) and (c) of CNS Act, 1997.

8. Perusal of record further demonstrated that samples separated for analysis were sent to the FSL, report whereof is still awaited. It was held in case reported as 2014 YLR 849 (Peshawar) (Shahzad Khizar Hayat Vs. The State) that “non availability of such report made the case against accused one of further inquiry”. Therefore, non-availability of FSL report in respect of contraband charas allegedly recovered makes the case of the petitioner/accused arguable for the purpose of bail, hence the case of the petitioner/accused requires further probe and falls within the ambit of subsection (2) of Section 497 Cr.P.C, which entitles him to the concession of bail on this ground too.

9. It is by now well settled that an accused person cannot be left at the mercy of the prosecution to remain in jail for an indefinite period. The liberty of an individual has been guaranteed by the Constitution and to have a speedy trial is an inalienable right of every accused person. The Hon’ble Apex Court in case of “Imtiaz Ahmed Vs The State through Special Prosecutor, ANF (2017 S C M R 1194) held that:-

*“17. To have a speedy trial, is the fundamental right of accused being universally acknowledged. Under the Criminal Procedure Code, smooth methodology and scheme for speedy trial, is provided whether it is held by the Session Court or Magistrate, in recognition of the said right of an accused person. This principle shall apply more vigorously to the trials before Special Courts, constituted under the CNS Act, or any other special law so that unnecessary delay, much less shocking one in its conclusion is avoided in all circumstances. Any unreasonable or shocking delay in the conclusion of the trial, before Special Courts, like we are confronted*

*with in the present case, would amount to denial of justice, or to say, denial of fundamental rights, to the accused, of speedy trial.”*

10. Petitioner has no previous record of like nature offence and this fact has been verified by the learned State Counsel as well.

11. Consequently, for what has been discussed above, the instant bail petition is allowed, petitioner (Nauman Mushtaq) is admitted to post-arrest bail subject to furnishing bail bonds in the sum of Rs.100,000/- (Rupees One Lac) with one surety in the like amount to the satisfaction of the learned Trial Court.

12. Needless to mention that this is tentative assessment for the purpose of this petition only, which shall not affect/influence trial of this case in any manner

(MOHSIN AKHTAR KAYANI)  
JUDGE

(FIAZ AHMAD ANJUM JANDRAN)  
JUDGE

Imran