

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

Criminal Misc. No. 894-B/2020

Faisal Masih

Vs

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.
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17.08.2020	Mr. Attique-ur-Rehman Siddiqui, learned Advocate for the petitioner. Mr. Husnain Haider Thaheem, learned State Counsel with Iqbal, SI/CIA Staff.
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FIAZ AHMAD ANJUM JANDRAN, J. Through the instant petition under Section 497 Cr.P.C, the petitioner (Faisal Masih) seeks post arrest bail in F.I.R. No.324, dated 27.07.2020, registered under Sections 9-C and 15 of the Control of Narcotics Substances Act, 1997, read with Article 3, 4 of Prohibition (Enforcement of Hadd) Order, 1979 and Sections 420, 468, 471 PPC, at Police Station Karachi Company, Islamabad.

2. The allegations, set-forth in the FIR are that on 27.7.2020, at about 12:30 p.m. near Charles Colony, CIA Staff intercepted the present petitioner, while he alongwith two others was handing over plastic sacks from Suzuki Cultus Car bearing No.AGD 806 ICT; that on seeing the police party, the two persons whose names were subsequently disclosed as Sohail Masih and Tariq Masih, succeeded to escape, while the petitioner was apprehended at the spot; on search of Suzuki Cultus, 288 bottles of liquor and 1200 grams Chars were recovered, hence the instant FIR.

3. Learned counsel for the petitioner contends that one day before the alleged occurrence, petitioner was kidnapped illegally by the constable, but on vigilant response of the

learned counsel for the petitioner, the matter was reported to highups of the police officials of CIA Staff and on the very next day only to justify their kidnapping, they have lodged the instant FIR; that Call Data Record-CDR also supports the contention of the petitioner, which corroborate the stance of the present petitioner, therefore, he is entitled to the concession of bail. Learned counsel relied upon case laws reported as 2019 SCMR 1651, 2020 SCMR 489, 2018 P.Cr.L.J, 590, 2018 P.Cr.L.J Note 85, 2017 YLR Note 94, 2011 YLR 2316, 2020 MLD 59 and 2020 MLD 282.

4. Conversely, learned State Counsel contends that the petitioner was caught red-handed while in possession of 1200 grams charas and 288 bottles of liquor; that investigation has been completed and challan has also been submitted in the Court on 02.8.2020, therefore, he is not entitled to the concession of bail.

5. Arguments heard, record perused.

6. The instant FIR has been registered by the CIA Staff and not by the police, who was not competent to investigate and process the case, while under the law they were required to inform the concerned police station for further progress of the matter. In this respect, reliance is placed on 2020 MLD 282 (Sindh) (Naseer Ahmad Versus The State), wherein it has been held as under:-

“(h) The DPG has call investigation officer of the case, who is also complainant. The DPG after consulting the investigation officer SIP Roshan Ali informs that CIA Centre is not a police station and investigation was not assigned to him by the SSP or DIG.

(i) Since, the complainant is not the Officer Incharge of Police Station nor he belongs to the said Police Station where

FIR is lodged; therefore, the investigation cannot be assigned to him, as per provision of Rule 25.1 of Police Rule 1934.

(j), (k)

- (l) It is not proper for police officer, who is complainant, to investigate the case, as a case reported as State V Bashir Ahmed and others PLD 1997 Supreme Court 408, wherein it held as:-*
"It could hardly be expected that a police officer, who is heading a raiding party and is a witness, also becomes the complainant and logs an FIR against the accused, and then becoming an Investigation Officer of the same case, will comply with the aforesaid Police Rule. In the circumstances, the practice of the seizing officer or the head of a police party who is also a witness to the crime becoming or being nominated as an Investigating Officer of the same case should be avoided and if any other competent officer is available in the police station, he may be nominated as the Investigating Officer rather than the head of the Police Party. As observed, Investigating Officer is an important witness for the defence also and in case the head of the police party also becomes the Investigating Officer, he may not be able to discharge his duties as required of him under the Police Rules."

7. In another judgment reported as 2018 P.Cr.L.J. 590, (Rashid Hussain Vs. The State), the Hon'ble Lahore High held as under:-

"The above provision does not include C.I.A. personnel, therefore, they have no power to investigate a cognizable offence and the investigation so conducted by Nasir Mehmood S.I. of C.I.A. Staff was illegal. We have fortified our view from the dictum laid down by this Court in "Iftikhar Ahmad alias Dani V. the State (PLD 1995 Lahore 606), wherein it has been held as under:-

"The members of the CIA Staff are subordinates of the Superintendent of Police of the District which S.P. has the powers of an Officer-in-Charge of a

police station in view of the provisions of section 551 of the Cr.P.C. Therefore, the members of the CIA Staff, irrespective of their rank and status, can investigate, cases only when they have been entrusted to them by an Officer-in-Charge of the Police Station to whom they are subordinate i.e. in case of CIA Staff, the S.P. of the District. Therefore, no member of the CIA Staff has any authority or power to investigate a case of their own motion in the absence of such an investigation having been entrusted to him by the S.P. of the District as abovementioned."

8. From above, it has become crystal clear that the instant FIR was lodged and processed by the CIA Staff, which is not warranted under the Police Rules as well as the dictums laid down by the superior courts of the country. In this view of the matter, case of the petitioner has become one of the further inquiry.

9. The case of the petitioner as per FIR is recovery of 1200 grams Charas, which is a borderline case and is marginally in excess of the quantity. In such like cases, the 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) and another 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.

10. Perusal of record reveals that the police has recovered 288 bottles of liquor alongwith 1200 grams charas from the vehicle No. AGD 806 ICT, Suzuki Cultus, however, there is no proof of selling of the liquor to someone in the FIR, therefore,

Article 3 of the Prohibition (Enforcement of Hadd) Order, 1979 *prima facie* does not attract to the case of the petitioner and offence under Article 4 of the Prohibition (Enforcement of Hadd) Order, 1979 is bailable, in this regard we are fortified with the case law reported as **2019 YLR Note 105 [Lahore (Multan Bench)] titled Shehbaz Ahmad and another Versus The State and another**. In another case reported as **2015 YLR 721 [Lahore] titled Amir Masih Versus The State and another** with similar facts and circumstances, it was held that in the absence of a specific purchaser, the allegation against the petitioner qua sale requires recording of evidence. *Prima facie*, the case against the petitioner maximum falls under Article 4 of Prohibition (Enforcement of Hadd) Order, 1979.

11. As far as offences under sections 420 & 471 PPC mentioned in the FIR are concerned, same are bailable while offence under section 468 PPC is although not bailable but does not fall within the ambit of prohibitory clause of section 497 Cr.PC. In such like cases, the grant of bail is a rule and refusal is an exception.

12. Moreover, the challan has already been submitted before the Court of competent jurisdiction on 02.8.2020 and the petitioner is no more required for further probe. He has no previous record of narcotics, this fact also extends benefit to him.

13. For what has been discussed above, the instant bail petition is allowed, petitioner (Faisal Masih) is admitted to post-arrest bail subject to furnishing bail bonds in the sum of Rs.200,000/-

(Rupees two Lacs) with one surety in the like amount to the satisfaction of the learned Trial Court.

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

(MOHSIN AKHTAR KAYANI)
JUDGE

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

A.R.ANSARI