

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

Criminal Misc. No. 976-B/2020

Abid Ullah

Versus

The State

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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21.09.2020	Mr. Hazrat Ali, Advocate, learned counsel for petitioner. Mr. Arif Riaz Butt, Special Prosecutor ANF with Sheraz Sadiq Inspector, PS RD ANF, North,
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FIAZ AHMAD ANJUM JANDRAN, J.

Through the instant petition under Section 497 Cr.P.C, petitioner (Abid Ullah), seeks post-arrest bail in F.I.R No 65, dated 24.07.2020, registered under Sections 9-C and 15 of the Control of Narcotics Substances Act, 1997, at Police Station A.N.F/RD North, Rawalpindi.

02. According to the allegation set-forth in the F.I.R, on 24.07.2020, Sheraz Sadiq Inspector ANF alongwith other officials was present near Main Gate of F-17, Islamabad when he received a spy information that drug paddler Abid (present petitioner) alongwith his companion is going to deliver huge quantity of narcotics substance in the parking area of Quetta Hotel, F-17, Islamabad. Resultantly, raiding party was constituted and reached the place pointed out by the informer. At about 19:30 hours, two persons riding on a motorcycle without number plate arrived, who were stopped and on asking, disclosed their names as Abid and Muhammad Younas. A shopping bag was hanging with the handle of Motorcycle, which was searched and charas weighing 1200 grams was recovered

from the said bag. On personal search, 220 grams ICE (amphetamine) from Abid (present petitioner) and 300 grams ICE (amphetamine) from Muhammad Younas was recovered, hence, this F.I.R.

03. Learned counsel for the petitioner contends that only 220 grams (with packing material) ICE was recovered from his possession, which falls within the ambit of Section 9(b) of CNSA, 1997; that he is first offender and his age is about 18/19 years, having no criminal record previously; that report of Chemical Examiner has not been received yet; that investigation is complete and petitioner is no more required for further investigation and he is behind the bars since his arrest, therefore, entitled for the concession of bail.

04. Conversely, the learned Special Prosecutor ANF, has contended that huge quantity of narcotics substance was recovered from the petitioner, therefore, he is not entitled to the concession of bail.

05. Arguments heard, record perused.

06. Perusal of record reveals that 1200 grams charas (weighed alongwith packing material) was recovered from the shopping bag, hanging with the handle of the motorcycle and recovery effected on their joint pointation of the accused namely Abid Ullah and Muhammad Younas which is not admissible in evidence. In this regard, reliance is placed on case law reported in *2018 P.Cr.L.J. Note 100 (Malang Jan*

and another Vs. The State). Relevant para is as under:-

"No doubt the petitioners are directly charged in the FIR and as alleged 3 KG of charas has been recovered from a wooden crate, on the Pointation of the present petitioners, but at the same time it is evident from the contents of FIR and the contents of recovery memo, that both the accused were in police custody in another case and were taken to the place of recovery. Recovery was effected on their joint Pointation, which is not admissible in evidence. Under the law joint recoveries are always considered defective. Wisdom could be drawn from the judgments reported in 1976 PCrLJ 1462, PLD 1989 Kr. 466, 1974 PCrLJ 501 and PLD 1997 SC 408."

07. Moreover, the report of Chemical Examiner is still awaited which, too, makes the case of the petitioner/accused one of 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. 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"*.

08. Perusal of record further reveals that as per F.I.R, 220 grams ICE (with packing material) was recovered from the possession of the petitioner, which falls under Section 9(b) of CNSA, 1997, and maximum punishment for the said offence is seven years, which does not fall within prohibitory clause of Section 497 Cr.P.C.

09. In addition, the recovered narcotics substance was weighed by the I.O. alongwith

packing material, if the same was weighed without packing material then its weight could be less than the same shown in the F.I.R which also makes the case of the petitioner one of further inquiry.

10. In view of above, the case of the present 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.

11. The case of the petitioner as per F.I.R is recovery of 1200 grams charas and 220 grams ICE alongwith packing material, which is a borderline case and is marginally in excess of 1 kg quantity. In such like cases, Hon'ble Supreme Court of Pakistan granted bail on the basis of borderline criteria 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 was recovered which marginally exceeds 1 kg and the benefit of bail was extended to the accused.

12. Admittedly, petitioner is a first offender having the age of 18-19 years, therefore, he may be afforded an opportunity to rehabilitate his future life.

13. For what has been discussed above, the instant bail petition is **allowed**, petitioner (Abid Ullah) is admitted to post-arrest bail subject to furnishing of bail bonds in the sum of **Rs.1,00,000/-** (Rupees once lakh) 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 trial of this ~~case~~ in any manner.

(MOHSIN AKHTAR KAYANI) (FIAZ AHMAD ANJUM JANDRAN)
JUDGE JUDGE

A.R. ANSARI