

HCJD/C-121
ORDER SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

CRL. MISC. NO. 195-B of 2020.

Tehseen Ullah.

VERSUS

The State, etc.

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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24.03.2020. Syed Muhammad Ali Rizvi, Advocate for the petitioner.
Dr Wasim Ahmad Qureshi, Special Prosecutor, ANF.

The petitioner Tehseen Ullah son of Habib Ullah has sought post arrest bail in case, F.I.R. No. 164, dated 27.10.2018, 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 driving the vehicle, whereas the co-accused namely, Muhammad Muhammad Bilal was seated on the passenger seat. The search of the vehicle led to recovery of "charas", weighing 4000 grams. Hence the instant petition.

3. The learned counsel for the petitioner has contended that; the latter has been falsely involved in the instant case; 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; the petitioner has been incarcerated for almost seventeen months; further incarceration of the petitioner will not serve any useful purpose; the co-accused has been enlarged on bail and the case of the present petitioner is at par with him, keeping in view the rule of consistency; the petitioner is innocent and not a hardened criminal; there is no chance of abscondance of the petitioner or tampering with the prosecution evidence; no incriminating material was recovered from the petitioner; the 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; the petitioner has no criminal record; investigation qua the petitioner has been completed and he is no more required for the purposes thereof; report under section 173 of Cr.P.C. has been submitted before the learned trial Court; there is no evidence against the petitioner; 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 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 4000 grams of Garda charas 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; 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 driving the vehicle at the time of alleged recovery and was arrested at the crime scene. Joint recovery has been affected from the present petitioner and other co-accused namely, Muhammad Bilal, who has been enlarged on bail. The petitioner has been incarcerated for almost seventeen months. Report under section 173 of Cr.P.C. has been submitted before the learned trial Court. Investigation qua the petitioner has been completed. The urgent measures taken by the Federal Government to combat the challenge of dealing with the potential threat of corona virus spread in prisons is definitely a valid fresh ground to be considered for grant of bail. In the instant case the quantity of recovered narcotics is such that though we are admitting the petitioner to bail but his release will be subject to satisfaction of the Investigating Officer or any other officer nominated or a Committee constituted by the Director General, Anti Narcotics Force, that the petitioner will not abscond nor there are other compelling reasons for refusal.

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 and the petitioner is admitted to bail but his release will be subject to a written order passed by the Investigating Officer. In case the latter is satisfied that the petitioner can be released then he shall be at liberty to seek such security/surety or impose any other condition(s) as he may deem appropriate in the circumstances.

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.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

(CHIEF JUSTICE)