

HCJD/C-121  
**ORDER SHEET**

**ISLAMABAD HIGH COURT**  
**ISLAMABAD**

**CRL. MISC. NO. 627-B of 2020.**

**Ziafat Mahmood.**

*VERSUS*

**The State.**

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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06.04.2020. Mr Muhammad Aslam Chaudhry, Advocate for the petitioner.  
Mr. M. Atif Khokhar, State Counsel.  
Mr Tipu Sultan Raja, I.O. S.I with record.

The petitioner Ziafat Mahmood son of Mohammad Ashraf has sought post arrest bail in case, F.I.R. No. 52, dated 25.01.2020, registered under section 9-C of Control of Narcotics Substance Act, 1997 (hereinafter referred to as the "**FIR**"), at Police Station Tarnol, Islamabad.

2. Brief facts, as alleged in the FIR, are that on 25.01.2020 while the police officials were on routine patrolling, the accused/petitioner was searched which led to recovery of 1200 grams of 'heroin' from his possession. Hence the instant petition.

3. The learned counsel for the petitioner has contended that; the latter was falsely involved in two FIR on the same day in same Police Station only with an interval of 3:20 hours; it is a border line case; the petitioner is innocent and has not committed the alleged offence; the petitioner has been falsely involved in the instant case; the petitioner has no criminal record; story as narrated in the FIR is false, frivolous and

vexatious; the petitioner has been incarcerated for two and a half months; there is no chance of abscondance of the petitioner and tampering with the prosecution evidence; the petitioner has no concern whatsoever with the alleged recovery; investigation qua the petitioner has been completed and he is no more required for the purposes thereof; offence does not fall within the prohibitory clause of section 497 of Cr.P.C.; there is violation of section 103 of Cr.P.C., as no private witness was associated during recovery proceedings; offence is not attracted against the petitioner; only one gram of narcotic substance was sent for Chemical Analysis which is against the law; report of Chemical Examiner is still awaited; the police has planted a fake recovery; incomplete report under section 173 of Cr.P.C. has been submitted before the learned trial Court; there is no evidence against the petitioner for the commission of the alleged offence; there is no evidence of sale/purchase of contraband substance; 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 State Counsel appeared alongwith Tipu Sultan Raja S.I. They have opposed the grant of bail. It has been contended that; the petitioner is nominated in the FIR; specific role has been attributed to the petitioner; recovery of contraband narcotic has been affected from the petitioner; report under section 173 of Cr.P.C. has been submitted before the learned trial Court; police officials had no previous enmity with the petitioner; police officials were competent to witness the recovery; hence, they have opposed the grant of bail.

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

6. Perusal of the record shows that 1200 grams of 'heroin' was recovered from the petitioner. The quantity of narcotics recovered in this case could bring the offence under section 9 (b) of the Control of Narcotics Substances Act, 1997. The gravity of the offence has nexus with the quantum of contraband narcotics recovered from an accused, which is yet to be determined by the learned trial Court. Whether or not the recovered narcotics were properly weighed needs further probe. The petitioner was arrested on 25.01.2020 and investigation qua him has been completed. The latter is no more required for further investigation. His further incarceration will not serve any useful purpose. Report of Chemical Examiner is still awaited and at this stage it cannot be presumed that the recovered contraband substance is a narcotic. Furthermore, incomplete report under section 173 of Cr.P.C. has been submitted before the learned trial Court and there is nothing on record to form an opinion that the petitioner may abscond or tamper with evidence if released on bail. We are of the opinion that a case for extending the concession of bail is made out.

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***, subject to furnishing bail bonds in the sum of Rs.100,000/- (Rupees one hundred thousand only) with one surety in the like amount to the satisfaction of learned trial Court.

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.

**(MOHSIN AKHTAR KAYANI)**  
JUDGE

**(CHIEF JUSTICE)**