

Form No: HCJD/C-121.

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Misc. No. 648-B of 2020.

Muhammad Fahad Malik.

Vs

The State, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
02.	28.04.2020.	Mr Muhammad Waqas Malik, Advocate for the petitioner. Dr. Wasim Ahmad Qureshi, Special Prosecutor, ANF. Mr Sheraz, Inspector, ANF with record.

The petitioner Muhammad Fahad Malik son of Malik Muhammad Ashfaq has sought post arrest bail in case F.I.R. No. 53, dated 15.03.2019 registered under section 9-C/15 of the Control of Narcotics Substances Act, 1997 (hereinafter referred to as "**CNSA of 1997**") at Police Station ANF/RD North, Rawalpindi.

2. Brief facts, as alleged in the FIR are that pursuant to receiving information, officials of the Anti-Narcotics Force, arrested the present petitioner alongwith other co-accused/accomplice after 1600 grams of 'charas' from each accused were recovered from their possession. Hence the instant case.

3. The learned counsel for the petitioner has contended that; this is third bail petition of the petitioner; the earlier petitions were dismissed vide orders, dated 28.05.2019 and 11.02.2020; this third application has been filed as the learned trial Court has failed to comply with the direction of the Court for conclusion of trial within four months; the petitioner has been falsely involved in the instant case; the petitioner has no nexus with the commission of the alleged offence; the petitioner is not a drug peddler; no incriminating material was recovered from the petitioner; recovery if any is fake and planted; case of the petitioner falls within the ambit of Section 497(2) of Cr.P.C.; the petitioner has no criminal record; the petitioner has been incarcerated for more than thirteen months; story as narrated in the FIR is false, frivolous and concocted; investigations qua the petitioner have been completed and he is no more required for purposes thereof; there is no chance of abscondance of the petitioner or tampering with the prosecution evidence; there is no direct or indirect evidence against the petitioner; there is violation of section 103 of Cr.P.C., as no witness from the public was associated during recovery proceedings; offence is not attracted against the petitioner; further incarceration of the petitioner will not serve any useful purpose; the petitioner had not made any disclosure leading to recovery of contraband substance; mere nomination in the FIR does not imply that the petitioner knew about concealment of contraband substance; case against the petitioner is that of further

probe; there is no proof of selling of narcotics; sections 20, 21 and 22 of CNSA have been violated; the petitioner is victim of malicious prosecution; hence prayed for the grant of post arrest bail.

4. The learned Special Prosecutor, ANF appeared alongwith Sheraz, Inspector. They have contended that; the petitioner is nominated in the FIR with specific role; the petitioner was arrested from the spot alongwith other co-accused; 1600 grams of charas was recovered from the petitioner; report under section 173 of Cr.P.C. has been submitted before the learned trial Court; charge has been framed; some of the prosecution witnesses have been recorded and remaining witnesses will be recorded shortly; report of Chemical Examiner is positive; substantial quantity of contraband substance has been recovered from the possession of the petitioner and other co-accused; the earlier bail petitions of the petitioner were dismissed on merits vide orders, dated 28.05.2019 and 11.02.2020; the petitioner has failed to point out any malafide on part of the prosecution; due to pandemic Covid-19 situation in the country, the direction of the Court could not be complied with, however, the case of the prosecution will be concluded in near future; the petitioner has no fresh ground for filing the instant bail petition; hence urged for dismissal of the present bail application.

5. The learned counsel for the petitioner and the learned Special Prosecutor, ANF has been heard and record perused with their able assistance.

6. This is third bail petition of the petitioner on the ground that the learned trial Court has not complied with the direction of this Court and that the trial is pending. The earlier bail petitions of the petitioner were dismissed on merits vide orders, dated 28.05.2019 and 11.02.2020 respectively. Substantial quantity of contraband substance was recovered from the petitioner and other co-accused. The petitioner was arrested from the crime scene. The conscious knowledge of the petitioner cannot be ruled out. Charge against the petitioner was framed on 24.09.2019 and some of the prosecution witnesses have been examined. The failure to conclude the trial pursuant to direction of this Court cannot be treated as a valid fresh ground. This third bail petition thus cannot be entertained in the light of the law laid down by the august Supreme Court in the case titled "*Amir Masih versus The State and another*" [2013 SCMR 1059]. Moreover, the august Supreme Court in the case titled "*Nisar Ahmed vs. The State and others*" [PLD 2016 S.C. 11] has held that non-compliance of a direction to conclude trial within a specified period cannot be treated as a fresh ground.

7. For the above reasons, bail is ***refused*** and the instant petition is accordingly ***dismissed***.

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.

(AAMER FAROOQ)
JUDGE

(CHIEF JUSTICE)

*Asad K/**