

Form No: HCJD/C-121.

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Misc. No. 227-B of 2020.

Abdul Qadir.

Vs

The State.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
02.	31.03.2020.	Syeda Maria Nasir, Advocate for the petitioner. Dr. Wasim Ahmad Qureshi, Special Prosecutor, ANF. Mr Naseer, SI, ANF with record.

The petitioner Abdul Qadir son of Badshah Khail has sought post arrest bail in case F.I.R. No. 99, dated 19.07.2018 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, intercepted a vehicle. The petitioner was seated on front seat, whereas the co-accused namely, Amjad Ullah was driving the vehicle. The search of the vehicle led to recovery of charas Garda, weighing 3300 grams. Hence the instant petition.

3. The learned counsel for the petitioner has contended that; this is third bail petition of the petitioner on medical grounds; the earlier petitions were dismissed vide orders, dated 08.11.2018 and 07.11.2019; the petitioner is a chronic patient of incisional hernia which is affecting his health and his life is in danger; the petitioner is innocent and has been falsely involved in the instant case with malafide intention of the prosecution; the petitioner has been incarcerated for more than twenty months; due to outbreak of corona virus the life of the petitioner is in danger in the jail due to deteriorating conditions in prisons; the petitioner is also paralyzed; no incriminating material was recovered from the petitioner; the petitioner was only the passenger in the alleged vehicle; story as narrated in the FIR is false, frivolous and vexatious; case of the petitioner does not come within the ambit of prohibitory clause of section 497 of Cr.P.C.; investigation qua the petitioner has been completed and he is no more required for purposes thereof; the petitioner has not committed the alleged offence; fake recovery has been planted; 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 has no criminal record; there is no chance of abscondance of the petitioner or tampering with the prosecution evidence; 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; the 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 Naseer, S.I. 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; 3300 grams of charas Garda was recovered from the petitioner and other co-accused concealed in secret cavities of the vehicle; 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 08.11.2018 and 07.11.2019; the petitioner has failed to point out any malafide on part of the prosecution; the petitioner has not placed on record any medical report or document to strengthen his medical condition for considering him for concession of bail; 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 medical grounds. The earlier bail petitions of the petitioner were dismissed on merits vide orders, dated 08.11.2018 and 07.11.2019. 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. The petitioner has not annexed with his petition any medical report or document, wherefrom it can be ascertained that the physical condition of the petitioner is critical/deteriorate and he be considered for concession of bail on medical ground. Charge against the petitioner was framed on 29.10.2018 and most of the prosecution witnesses have been examined. This third bail petition is thus devoid of merits and not maintainable 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]. It is noted that time frame was not specified for conclusion of the trial in the order, dated 07.11.2019. 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.

(MOHSIN AKHTAR KAYANI)
JUDGE

(CHIEF JUSTICE)

*Asad K/**