

Form No: HCJD/C-121.

**ORDER SHEET**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**

**JUDICIAL DEPARTMENT**

Crl. Misc. No. 194-B of 2020.

Shakeel Masih.

*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.                          | 24.03.2020.                | Mr Kamran Amjad Kayani,<br>Advocate for the petitioner.<br>Dr Wasim Ahmad Qureshi, Special<br>Prosecutor, ANF. |

The petitioner Shakeel Masih son of Amanual has sought post arrest bail in case, F.I.R. No. 227, dated 27.11.2019, registered under sections 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 the petitioner and other co-accused namely, Imran Khan were arrested pursuant to their personal search, 200 grams of narcotics/heroin was recovered from the present petitioner, whereas 1500 grams of heroin was recovered from other co-accused. Hence the instant case.

3. The learned counsel for the petitioner has contended that; no incriminating material was recovered from the latter; the petitioner as no concern whatsoever with the alleged recovery; recovery if any is fake and

fabricated; the petitioner is innocent and has not committed the alleged offence; offences are not attracted against the petitioner; the petitioner has been incarcerated for almost four months; the petitioner has no criminal record; it is a case of victimization of the petitioner; story as narrated in the FIR is false, frivolous and vexatious; the case against the petitioner comes within the ambit of further probe; further incarceration of the petitioner will not serve any useful purpose; bail concession cannot be held as a punishment; the learned counsel has urged that the petitioner be extended the concession of post arrest bail.

4. The learned Special Prosecutor, ANF has contended that; the petitioner is specifically nominated in the FIR; specific role has been attributed to him; contraband was recovered at the spot; substantial quantity of contraband substance was recovered; the petitioner is member of an organized gang, which is engaged in sale of the contraband substance; report under section 173 of Cr.P.C. has been submitted before the learned trial Court and the trail will be concluded shortly; the agency had no previous enmity with the petitioner; the officials are competent witnesses; hence, he has opposed the grant of bail.

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

6. Perusal of record reveals that 200 grams of contraband substance was recovered from the petitioner, whereas 1500 grams of heroin was recovered from other co-accused namely, Imran Khan. Report under section 173 of Cr.P.C. has been submitted before the learned trial Court but not a single witness has been examined as yet. The petitioner has been incarcerated for almost four months. Although, the Court has become functional but the proceedings have been virtually suspended because of the policy of the Federal Government in the context of the corona virus. The urgent measures taken by the Federal Government to combat the challenge of dealing with corona virus and preventing its spread is to be treated as a ground for granting him bail. Further incarceration of the petitioner will not serve any useful purpose and can be a threat to his life in the prevailing circumstances. In the circumstances, 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.50,000/- (Rupees fifty 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.

(FIAZ AHMAD ANJUM JANDRAN)  
JUDGE

(CHIEF JUSTICE)

*Asad K/\**